



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00224/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 15 September 2021**

**Decision & Reasons Promulgated
On 15 November 2021**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**KBN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. N Garrod, Counsel, instructed by Gordon and Thompson Solicitors

For the Respondent: Ms. A Everett, Senior Presenting Officer

DECISION AND REASONS

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to

comply with this direction could give rise to contempt of court proceedings.

Introduction

1. The appellant is a national of Nepal. He appeals against a decision of the respondent not to recognise him as a refugee and to refuse to grant him leave to remain. The respondent's decision is dated 8 November 2019.
2. The First-tier Tribunal (JFtT McIntosh) dismissed the appellant's appeal by a decision dated 16 March 2020. The appellant was granted permission to appeal by UTJ Lindsay on 14 January 2021. By a decision dated 22 April 2021 I allowed the appeal to the extent that the decision of the First-tier Tribunal was set aside, and it would be remade by this Tribunal. No findings made by the First-tier Tribunal were preserved.

Anonymity

3. I made an anonymity order by way of my decision dated 22 April 2021. Neither party sought for it to be set aside. I consider it just for the order to continue and it is confirmed above.

Background

4. The appellant is presently aged 62. He details that he was born in Gorkha, Nepal, as a member of the Sarki caste. This is a Khas occupational caste traditionally belonging to leather workers. According to the 2011 Nepal census, Sarki make up 1.4% of Nepal's population (374,816). Under the caste system, formally abolished in Nepal in 1963, Sarkis were considered 'untouchable', 'dalits' or 'achut'.
5. He resided in Gorkha until 1989 and then relocated to Baglung for 12 years. In 2001 he moved to Dumre, Tahanau District, and then returned to Gorkha in 2005 where he resided until 2006.
6. He states that he was a health worker in Nepal and that he has a diploma in rural health and development. He worked as an examiner at the United Mission Hospital until 1998. He confirms that whilst working at the hospital his caste did not create difficulty as colleagues would 'put it aside' but after work they would behave differently as 'they would not sit with me or let me stay with them.'
7. The appellant opened a medical shop in 1998, having undertaken training offered by the Nepalese government.

8. The appellant details that he was not permitted to work as a civil servant. In addition, he was not permitted to enter temples and had to worship outside.
9. He states that he left Nepal because he felt trapped between the army and Maoist insurgents. The Maoists asked him to work for them and also demanded that he pay them money. They subsequently harassed him because they believed he was providing information to the Nepalese authorities. The army wanted him to work for them and on one occasion he was assaulted by being slapped three times across the face. The army also harassed him, alleging that he treated injured Maoist fighters. He asserts that he was harassed by insurgents who believed that he was giving information to the Nepalese authorities.
10. The appellant applied for a visa to enter the United States of America to work on a voluntary project. The application was refused.
11. He then secured a place on a voluntary project in this country. He applied for entry clearance as a visitor on 18 April 2006. While considering the application, the administrative coordinator of the project was contacted by an entry clearance officer and confirmed that the appellant had been invited to join and participate in the project. The appellant attended an entry clearance interview where he satisfied the interviewer as to his reasons for coming to the United Kingdom though it was noted that his economic circumstances "are not good and he comes from Maoist area". The application was granted, and the appellant was issued with entry clearance valid from 19 April 2006 to 19 October 2006, permitting him to attend the voluntary project from 8 June 2006 to 13 July 2006.
12. The entry clearance application of a second Nepalese national invited to join the project was refused, evidence that such applications are considered with rigour.
13. The appellant states that upon securing entry clearance he left Nepal in 2006 and travelled to this country. The appellant applied for leave to remain in this country outside of the Immigration Rules ('the Rules') on 25 September 2015. The respondent rejected this application on 18 November 2015.
14. The appellant was served by the respondent with notice as an overstayer on 26 May 2017. The appellant visited an asylum intake unit on 3 August 2017 and subsequently made his claim for international protection, some 11 years after he entered this country.
15. The respondent refused the appellant's application by a decision dated 8 November 2019. The respondent concluded that that the appellant's

claim that he was a member of the Sarki caste was unsubstantiated. As to the claim of persecution at the hands of the army and Maoists, the decision letter noted inconsistency in the appellant's stated history.

16. The appellant exercised statutory appeal rights. By means of his grounds of appeal the appellant made several complaints as to the interpreter who attended the asylum interview. In addition, he relied upon several documents that were not previously placed before the respondent, including a letter from the Communist Party of Nepal ('CPN') dated 2 November 2019 which was addressed to the appellant and requested that he aid the party physically and financially. The letter additionally detailed, 'we do not have to remind you what your situation would be if you don not [sic] response [sic] the party's order'.

The Hearing

17. The parties placed before the Tribunal the following bundles:
- i. Respondent's bundle, dated 31 January 2020
 - ii. Appellant's FtT bundle, dated 11 February 2020
 - iii. Appellant's supplementary FtT bundle, dated 20 February 2020
 - iv. Appellant's UT bundle, dated 6 April 2021
 - v. Appellant's extra supplementary bundle, dated 14 September 2021
18. At the hearing on 15 September 2021 the appellant's legal representatives were reminded as to the inappropriateness of filing and serving an unindexed 128-page bundle with no identification as to essential reading at 1pm the day before a resumed hearing. The legal representatives were reminded as to the concerns identified by the High Court in *Lawal v. Adeyinka and Coker* [2021] EWHC 2486 (QB) (25 August 2021), at [37]-[38], as to their failure to meet expected professional standards in respect of the inadequate and late preparation of bundles. I am grateful for the help of Mr. Garrod in identifying key documents and passages in the extra supplementary bundle.
19. I am also grateful to Mr. Garrod for his detailed and helpful skeleton argument, dated 7 September 2021.
20. The appellant attended and gave oral evidence. In addition, he relied upon witness statements.
21. Reliance was placed upon various supportive letters as well as two witness statements made by Nil Hari Ghimery, a Hindu priest. I have read an undated letter, running to 24 pages, which constitutes the

appellant's grounds of appeal, accompanied by several documents, detailed below:

- i. Letter (and translation) of a letter from Resham Adhikari, Ward Chairman, Palungtar Municipality, dated 17 November 2019, confirming that the appellant is a member of the Sarki caste.
- ii. Letter (and translation) of a letter from Resham Adhikari, Ward Chairman, Palungtar Municipality, dated 17 November 2019, confirming that the appellant's home was destroyed in the 'April 2015' earthquake, that there was no contact with his family, and relief funds have not been released.
- iii. Letter (and translation) from the Central Committee of the Communist Party of Nepal, dated 2 November 2019, ordering the appellant to help the party 'physically as well as financially'.
- iv. Letter (and translation) from the Communist Party of Nepal (Maoist)(Baglung) dated 14 March 2002, requesting that the appellant pay the sum of Rs 1,00,000.
- v. Receipt (and translation) from the Communist Party of Nepal (Maoist)(Baglung) dated 14 March 2002, confirming that the appellant paid Rs 10,000.

22. The appellant asserts that he has a well-founded fear of persecution in relation to:

- i. Maoist parties, including the CPN
- ii. The army
- iii. Being a member of a particular social group, the Sarki caste.

23. Mr. Garrod informed me that it had been expected that the appellant would rely upon a fear of a state agent of persecution, Netra Bikram Chand, popularly known as Biplav, the leader of the CPN since November 2014. The CPN was formed following a split in the Communist Party of Nepal (Revolutionary Maoist) in 2014, which itself was formed following a split in the Communist Party of Nepal (Maoist Centre) in 2012. The latter led national governments in 2008 to 2009, 2013 to 2015 and 2016 to 2017. It merged with the Communist Party of Nepal (Unified Marxist-Leninist) to create the Nepal Communist Party, though it was subsequently revived following a Supreme Court ruling in March 2021.

24. In March 2019, former Prime Minister K.P. Sharma Oli's government declared the CPN a criminal outfit over the party's alleged involvement in bombings, extortion and the killing of civilians.

25. In March 2021 the Nepalese government signed a peace agreement with the CPN and agreed to lift a ban on the group, release all their party members and supporters in jail and drop all legal cases against them, while the CPN agreed to give up all violence and resolve any issues through peaceful dialogue. In May 2021 the CPN suffered a split after politburo member Krishna Prasad Dhamala (aka Gambhir) formed a new party, the Jana Samajwadi Manch-Nepal (JSM-N). By September 2021 the CPN was advocating nationwide protests.
26. Mr. Garrod informed me that following the change of government on 13 July 2021 which led to the accession of Prime Minister Sher Bahadur Deuba, leader of the social democratic Nepali Congress party, the appellant could no longer properly seek to assert that Biplav and the CPN were state agents of persecution. Mr. Garrod was unable to inform me as to where Biplav and the CPN were presently operating in Nepal.

Decision

Asylum/article 3 ECHR

27. It is for the appellant to prove, on the lower standard, that he is at risk on return to Nepal of serious harm such as would constitute persecution, entitle him to humanitarian protection and/or engage article 3 ECHR. In assessing the evidence of the appellant, I am mindful of the guidance in *KB & AH (credibility - structured approach) Pakistan* [2017] UKUT 00491 (IAC) and that provided by the Court of Appeal in *SB (Sri Lanka) v. Secretary of State for the Home Department* [2019] EWCA Civ 160.
28. In *Karanakaran v Secretary of State for the Home Department* [2000] 3 All E.R. 449, [2000] Imm. A.R. 271 the Court of Appeal held that when determining whether there was a serious possibility of persecution, all material considerations should be considered cumulatively, unless there is no serious possibility that the facts are as contended for by the appellant.
29. I observe Lord Dyson's apt observation in *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49, [2011] 2 All E.R. 65, at [21], that 'for appellants who appeal to the [Tribunal] in Refugee Convention or article 3 cases, the stakes are often extremely high. It is not, therefore, surprising that appellants frequently give fabricated evidence in order to bolster their cases.' That there may be embellishment in aspects of a historical account is not therefore, by itself, determinative as to credibility. Rather, it forms part of the cumulative consideration.
30. In *AU v. Secretary of State for the Home Department* [2020] EWCA Civ 338, [2020] 1 W.L.R. 1562 the Court of Appeal held, at [11],

'11. I note in that regard the conventional warning which judges give themselves that a person may be untruthful about one matter (in this case his history) without necessarily being untruthful about another (in this case the existence of family life with the foster mother's family), known as a 'Lucas direction' (derived in part from the judgment of the CACD in *R v Lucas* [1981] QB 720 per Lord Lane CJ at 723C). The classic formulation of the principle is said to be this: if a court concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure. That is because a person's motives may be different as respects different questions. The warning is not to be found in the judgments before this court. This is perhaps a useful opportunity to emphasise that the utility of the self-direction is of general application and not limited to family and criminal cases.'

31. The judgments identified above evidence a golden thread that has run through domestic asylum law from at least the time of the decision of the Tribunal in *Chiver (Asylum; Discrimination; Employment; Persecution)* [1997] I.N.L.R. 212: it is possible for a judge to be persuaded that the centre piece of a witness' story stands, despite believing the witness is not telling the truth in some matters, exaggerated the story to make a better case or was simply uncertain about matters.
32. I note the documents addressed above, at [21], which on their face are supportive of the appellant's evidence as to his personal history. However, in relation to my assessment of the documentary evidence provided, I adopt the approach in *Tanveer Ahmed v. Secretary of State for the Home Department* [2002] Imm AR 318.
33. Cases can arise where concerns over the veracity of an appellant's account are so clear-cut and decisive that a decision-maker is driven to reject supporting documents, *AR (Pakistan) v. Secretary of State for the Home Department* [2017] CSIH 52: see *QC (verification of documents; Mibanga duty) China* [2021] UKUT 33 (IAC), at [30]-[35].
34. I have therefore proceeded to consider the evidence in the round, and to consider reasons as to why the appellant may have been untruthful in his evidence. However, having taken such steps and for the reasons detailed below, I have reached the conclusion that the appellant's evidence is incapable of belief.

Preliminary issue - interview

35. The appellant has complained of the competence of the interpreter who attended his asylum interview. Mr. Garrod did not pursue this matter at the hearing, and I have no evidence in the form of a witness statement from the appellant's legal representatives that upon listening to the recording of the interview they consider the appellant's observations as to the standard of interpretation to be well-founded. However, I am willing to give the appellant the benefit of the doubt on this matter and so I place limited weight upon the contents of the interview. I solely rely upon those answers to which no complaint is made.

Contact with family/ family circumstances

36. The appellant's evidence as to his ongoing, or otherwise, contact with his wife and five children upon his leaving Nepal in 2006 is entirely inconsistent and incredible. He confirmed at Q20 of his substantive interview that he had no communication with his family since he left Nepal in 2006. This is not a question of which complaint is subsequently made as to the standard of interpretation. However, at the hearing before me the appellant adjusted his evidence during cross-examination and detailed that he had "brief" contact with his wife and children following his arrival. He then confirmed that he has been in contact with them "for 4 or 5 years"; ceasing contact only as he no longer had their phone number. This answer was varied to contact ceasing after he phoned them, but there being no reply. He changed his position again and confirmed that he had been in contact with them until the earthquake in 2015, a period of 9 years after his lawful entry into this country.
37. Mr. Garrod sought, with his usual skill, to address in re-examination the clear inconsistencies arising but the appellant again proved extremely unreliable. He detailed that he was only in touch with his family for 4 or 5 years after arriving in this country, but almost immediately stated that he had been in contact with his family until the earthquake in 2015 and so had lost contact only for the last 4 to 5 years. When asked why his evidence had changed, the appellant simply replied that in 2014 he had suffered tuberculosis and had been in hospital. He then reiterated that he had been in contact with his family until 2015. When asked why he had earlier stated that he had been in contact with his family only during the first 4 to 5 years in this country he replied, "I did not have a mobile" and then asserted that he had stated that his family were "missing for 4 to 5 years" and it was not his mistake as to the answer provided. When I asked whether he was criticizing the Tribunal appointed interpreter, he was clear in his answer that he was not. He then re-iterated that he had last spoken to his wife and children in 2015.

38. The appellant's evidence on this issue from the time of his interview to the end of his oral evidence at the hearing changed with ever increasing regularity. Indeed, such extreme inconsistency was identifiable on occasion in answers that were seconds apart.
39. My consideration of the appellant's evidence on this issue is tied to my assessment of his evidence in respect of his efforts to identify the whereabouts of his family following the 2015 earthquake. His evidence on this matter was striking in its indifference. He detailed in his witness statement that sometime after the earthquake on 25 April 2015 he got in touch with his brother-in-law through a friend. His brother-in-law then explained that his family were missing, and the family home destroyed. I note that it is this brother-in-law who also advised the appellant that he remained at risk from the CPN. The appellant's wife is said not to have remained in contact with her brother, despite the family home being destroyed and his residing nearby in Ghorkha. The appellant confirmed in answer to questions from Ms. Everett that he had not sought to get in touch with the Red Cross to locate his family, as he did not believe it would help. He simply asked a friend residing in this country who was returning to Nepal to look for his family. I agree with Ms. Everett's submission that the appellant's evidence shows, if true, staggering indifference to the fate of his wife and children after a major natural catastrophe. I am satisfied that the appellant is untruthful in respect of his family's circumstances. If he were truly concerned as to their fate after the earthquake it is reasonable to expect that he would be anxious as to their safety and made greater efforts to locate them, or at the very least establish that they were not amongst the 9,000 people killed. In addition, I find it entirely incredible that if the family home had been destroyed the appellant's wife would not have turned to her brother, even if for temporary support, not only for herself but also for her children.
40. Considering the evidence concerning the appellant's family in the round, I am satisfied to the required standard that the appellant has constantly remained in contact with his wife and children, as well as his brother-in-law and other family members, since arriving in this country. He entered this country lawfully, and so there was no traumatic separation from his family as is often experienced by those having to expeditiously flee persecution. There is no cogent reason advanced as to why the appellant would have broken contact with his family as soon as he arrived in this country. I have no doubt that the appellant identified the incoherent nature of such an assertion following his interview and so sought to amend his history of familial contact at the hearing. However, he was garbled as he recited his amended history, and I am satisfied that this was because he was simply making his story up as he went along. When Mr. Garrod sought to re-examine, the appellant adopted

the deliberate and evasive techniques of seeking to deflect and then not engaging. Such evasive techniques were used elsewhere during his evidence, usually at points where it was clear that the evidence he previously provided was identifiably inconsistent or unsustainable. I am satisfied that the appellant did not experience interpretation difficulties at the hearing; indeed he expressly confirmed to me that such problems had not arisen. For these reasons I find that the appellant is untruthful both as to having no contact with his family following his admission to this country, or in the alternative enjoying only limited contact until some point in time until 2015.

41. I further find that he is untruthful as to his wife and children having disappeared since 2015. I find that he has remained in contact with them throughout his time in this country and continues to be in contact with them. In reaching this conclusion, I have considered the letter of Mr. Adikhari detailing that there has been no contact with his wife and children but being mindful of the guidance provided in *Tanveer Ahmed* I find that no proper weight can be placed upon this letter. The appellant's evidence is so incoherent on this matter that the only proper course is to reject Mr. Adikhari's letter as entirely unreliable: *AR (Pakistan)*.
42. I accept that the appellant resided in Gorkha before travelling to this country, having provided a home address in the town when making his entry clearance application. I note that the epicentre of the April 2015 earthquake was east of Gorkha District at Barpak, Gorkha, and so there is a real likelihood that the appellant's home was damaged. However, I am satisfied that the appellant's wife and children readily sought help from close family members living nearby, such as the appellant's brother-in-law, rather than disappear. The brother-in-law continues to reside in Gorkha, consistent with the fact that day-to-day life continued for many in the region. In the circumstances, I find that the wife and children presently reside in Gorkha and remain in contact with the appellant.
43. There is no requirement that I ascertain why the appellant has been untruthful on the issue as to his family. However, I note the appellant's evidence before me that he had secured only limited unlawful employment on occasion over the years, working no more than 6 hours a week. This was advanced as one of the reasons he did not contact his family as he had no money to send them. I am satisfied that from the outset it was the appellant's intention to remain in this country following his arrival and to secure employment. Through such employment he has regularly sent remittances to his family. He seeks to hide such familial contact, and remittances, as it undermines his assertion, first made some 11 years after his arrival, that he possessed a well-founded fear of

persecution when leaving Nepal and continues to possess such well-founded fear.

Fear of army and Maoists

44. I address these separate fears together, with the preliminary observation that the political situation has changed in Nepal since the appellant left the country in 2006. Nepal was riven by a protracted civil war between Maoist armed groups and the Royalist government between 1996 to 2006. Peace talks ended on 21 November 2006, after the appellant's arrival in this country, with the signing of the Comprehensive Peace Accord between then Prime Minister Koirala and Maoist leader Prachanda.
45. The civil war raised tensions and suspicions on both sides of the conflict. It is plausible that Maoist insurgents may have sought financial or personal support and that the army also sought support, particularly in the providing of information as to the movement and actions of the insurgents. However, plausibility does not necessarily equate to credibility and is not a separate stage in its assessment. A decision as to whether an appellant is credible should properly be founded on the totality of the evidence, including consistency on essentials or major inconsistencies, omissions and details, improbabilities or reasonableness: *MM (DRC - plausibility) Democratic Republic of Congo* [2005] UKIAT 00019; [2005] Imm AR 198. The general circumstances of the Nepalese civil war, without more, do not establish a Convention ground, nor establish a well-founded fear of persecution.
46. Turning initially to the purported fear of the army, the appellant contends that suspicions were raised because of his membership of the Sarki caste. Such membership is addressed in more detail below, but even if I take this concern at its highest it is said that such suspicions arose because, according to the appellant, "the State was under the impression that almost the entire group belonging to the Sarki caste were also involved to help the Maoists." This purported reason for the army's adverse interest in the appellant expired on, or soon after, the signing of the Comprehensive Peace Accord. I observe that the army has subsequently acted under the control of several Maoist-led governments as recently as spring and early summer this year.
47. I do not find the appellant credible in his evidence that he was threatened at his Baglung shop by members of the military in November 2001 on the pretext that he was suspected of providing medical treatment to Maoist insurgents. This was a serious allegation to be made during the course of a civil war. I find that having made such threats, the army would not have let the appellant remain free, as he asserts, yet proceed to arrest others in the area. Nor do I find that the

appellant is credible as to having been required to attend an army camp, proceed to reject a request to act as a 'spy' and then be subjected to three slaps to the face with accompanying threats of torture or death. It is said by the appellant that during such events a captain asked the appellant to explain his background, then stated that he should leave the camp because there were multiple reports against him and 'this place is dangerous for you'. There is clear inconsistency in the appellant's evidence. On one hand it is stated that the army was aware of his personal background and suspicious of his having aided insurgents with his medical skills. On the other hand, the army captain interrogating him was unaware of his background, despite possessing knowledge of 'multiple reports' existing in relation to the appellant, whom he considered to be in danger if he remained in the camp. I am satisfied to the required standard that such inconsistency flows from the appellant being an entirely unreliable witness.

48. I observe that prior to the hearing before me the appellant's evidence was that it was the incident in the army camp which led to him leaving Baglung and relocating to Dumre in Tahanau District. However, during cross-examination, he stated for the first time that he was required to leave his shop in Baglung because the army had "locked" it. He had previously stated that the shop failed as a business because a greater proportion of the population were higher caste, as opposed to low caste, and that affected the viability of his business. I am satisfied to the required standard that the appellant introduced into his evidence that his shop was closed by the army because he was aware that the personal history as advanced to date was simply incapable of establishing that he was anything other than a shopkeeper who had proven capable of navigating the difficulties arising in the civil war. Such an addition to his evidence was not an embellishment, but a calculated effort to bolster a significantly damaged claim. In reaching this conclusion, I observe that this evidence caused another example of the appellant refusing to engage with Mr. Garron, who sought to address the matter in re-examination. The appellant was asked as to why he had not previously detailed that the army had shut his shop down. The appellant stated that when he "needed to run away" he closed his medical shop. He arranged with the landlord that if anyone wanted to buy it, they could arrange it with him. Then the army closed it. Mr. Garron sought on several occasions to secure more detail about the chronology advanced, but the appellant deflected questions asked or proved unwilling to engage, to the extent that the interpreter informed those present that the appellant was simply repeating the same answer to different questions. When asked as to why he had not raised this matter previously, the appellant simply stated that "time was short" in the hearing. When asked what he meant, the appellant proved unwilling to explain. I am satisfied that such behaviour established the appellant to

be an uncooperative witness when issues of inconsistency and implausibility were raised with him.

49. In the circumstances, whilst I find that the appellant may have had minor interactions with the army, as can be expected in times of civil war, his asserted history of intimidation, threats, recorded suspicions and his being forced from his business in Baglung are untrue. I conclude that the appellant has never enjoyed a well-founded fear of persecution at the hands of the Nepalese army.
50. I proceed to consider the appellant's fear of the Maoists. The core of the appellant's claim is that whilst living in Baglung a demand was made in March 2002 that he pay money to the Maoists, which he did at a reduced rate. Later, whilst living in Dumre Maoists demanded that his daughters join the party, which he refused. He accepts in his witness statement that the political situation has changed in Nepal, but details his belief at [67] that the CPN, a "disgruntled faction of the old Maoist party" has gone underground and is in "the process of identifying old cadres and supporters who would like to join them or else support them financially from outside". He further states as to the CPN, "[t]hey are campaigning massively to garner support through letters, leaflets etc trying to win people over peacefully. [If] they don't succeed then they will indulge in threats, coercion and even killing which is clear from their letters etc." He further details at [68], "[e]ven I have received [a] threat letter from a new faction of the Maoists as my background and previous financial support is with them."
51. I have considered the letter from the Communist Party of Nepal (Maoist) dated 14 March 2002 and the receipt for payment dated the same day. The appellant was on notice that the respondent disbelieved his claim. I observe the guidance provided by Collins J in *Tanveer Ahmad* and find that the appellant has given no cogent or coherent explanation as to how he received these documents, having left the country in 2002. I observe the appellant's evidence that the family home was destroyed in the 2015 earthquake. No cogent or coherent explanation was given as to why these documents were kept so long after the conclusion of the civil war. I find, on balance, that these documents are not genuine. I conclude that the appellant was never required to contribute funds to the Maoists nor financially contributed to them.
52. I have considered the letter from the Central Committee of the CPN, dated 2 November 2019 and signed by Biplov. Again, I am mindful of the guidance provided in *Tanveer Ahmed*. The letter is addressed generally to the appellant simply at 'Palungtar Municipality 3', a ward where a few thousand people reside. No street address is detailed. In circumstances where the appellant has not resided in Gorkha since 2006

and on his own evidence his family have disappeared and being aware that the respondent does not accept him to be a credible witness, the appellant has provided no cogent or coherent explanation as to how the letter reached him from Nepal.

53. It is the appellant's case that the CPN wished for him, then aged c59 years old, to help the party both physically and financially as the party was looking for help from 'old cadres and supporters', which on his own case he was not. I consider the letter to be odd in the assertion that 'as we knew, you was [sic] supporting to [sic] our previous party from your own places [sic]'. I note that I am considering a translated document, but no complaint is made of the translation which was made on behalf of the appellant. It is not his case that he helped Maoists - in the sense of being a supporter or cadre - in several places where he lived throughout the civil war. Yet the letter emphasizes without proper reason that the appellant has resided in various places in Nepal. The appellant's evidence as to events is of minimal engagement during such time. Further, I consider that the approach adopted in the letter is a very strange way of detailing previous support.
54. A fear of the CPN was not raised at the substantive asylum interview held in October 2019. It was raised for the first time by means of the grounds of appeal. In March 2019 the CPN had been declared a 'criminal outfit' and I observe that at the time the appeal was filed, the CPN was a Maoist splinter group that was not supportive of the Communist Party of Nepal (Unified Marxist-Leninist)-led government of K. P. Sharma Oli. Having considered the evidence placed before me in the round, I am satisfied that the recent reliance upon a fear of the CPN enjoys no substance. I conclude that the letter signed by Biplov is not genuine. Rather, it is a crude attempt to embellish an extremely weak asylum claim, designed to suggest an ongoing fear as well as seeking to reinforce the notion that Maoists have been in contact with the appellant in several areas of Nepal over several years before he travelled to this country.
55. I consider the appellant to be an entirely unreliable witness, and so I do not accept that he has ever been of interest to any of the myriad of Maoist political parties and armed insurgent groups. He was never required by Maoist insurgents or political parties to provide financial contributions; never requested to join Maoist insurgents or political parties; never asked to physically aid Maoist insurgents or political parties and was never requested to send his daughters to join Maoist insurgents. He has never enjoyed a well-founded fear of persecution at the hands of the various Maoist insurgents of political parties.

56. Ultimately, I find that whilst residing in Gorkha in 2006 the appellant held a professional role at Vijay Medical Hall. He provided evidence confirming his personal circumstances both at the date he applied to the NGO for the voluntary placement and when he applied for entry clearance, and such evidence as to employment and residence was accepted as genuine. An entry clearance officer was satisfied as to the documents provided and concluded, despite noting that the appellant's economic circumstances were not good, that the requirements of paragraph 41 of the Immigration Rules were met and that the appellant enjoyed sufficiently strong ties to Nepal to be expected to return home before the expiry of his visa. I am therefore satisfied that the appellant's employment with Vijay Medical Hall was stable in nature and did not bring him to the adverse attention of the warring parties in 2006. I therefore conclude that his evidence as to having problems with the army, the Maoists and with sustaining his professional career consequent to persecution is not credible.

Caste

57. I observe that the appellant provided answers at interview that established a knowledge of the Sarki caste, though I take judicial note that knowledge of the caste system, a traditional system of social stratification of Nepal, permeates Nepali society.
58. Taken at its highest, Mr. Ghimery's evidence cannot aid the appellant. He is solely reliant upon what the appellant has told him, and as detailed above the appellant is not a truthful witness as to his personal history. I note Mr. Ghimery's assertion that the appellant's surname concerns a sub-caste of the Sarki caste, but the appellant accepted in answer to a question from Ms. Everett that the name alone did not identify him as Sarki: '90% would presume [I am Sarki], 10% would not'.
59. The appellant relies upon a letter from Rodger Vickers, dated 21 February 2021. Mr. Vickers worked as an expatriate volunteer in Nepal for several years and details that the appellant is from a Sarki background. No explanation is given for such knowledge. Mr. Vickers details that the appellant experienced difficulty in being accepted in the community by higher caste persons. It is not explained as to whether Mr. Vickers saw such discrimination or relies upon information provided by the appellant, who has proven to be a very unreliable witness.
60. I observe a short note from Mr. Kanu, an advocate and notary, who simply asserts that the appellant is a member of the Sarki caste, without more. I am satisfied that this witness is reliant upon the appellant for such information.

61. The appellant further relies upon a letter from Mr. Adhikari, ward chairman, dated 17 November 2019 in which he confirms that the appellant is a member of the Sarki caste. I note that the appellant relies upon a second letter from Mr. Adhikari, written on the same day with the same reference number and same dispatch number, concerned with his not having sought compensation from the relief fund and I have given reasons for concluding it not to be a genuine document. I do not consider this document to be genuine.
62. Save for the witness evidence detailed above, which is primarily reliant upon his veracity as to personal circumstances and events, the appellant relies upon his 'name' as identifying his membership of the Sarkhi caste. Mr. Garrod accepted before me that no objective evidence was placed before the Tribunal corroborating the assertion that the appellant's surname established membership of the caste.
63. I conclude that the appellant is such an unreliable witness, prepared to use false documents, and to vary his evidence on each and every occasion his inconsistencies and untruths are noted that he cannot establish his caste, even on application of the lower standard of proof.
64. It is not for me to consider whether the appellant believed that asserting membership of a Sarkhi caste would be beneficial to him in his dealings with Mr. Vickers or others, but his evidence is so unreliable that I am driven to reject the supporting documents. I am satisfied that the appellant is untruthful when conveying his personal circumstances to others.
65. At the hearing before me this element of the appeal could properly be identified as the appellant's primary ground. It was clearly apparent that Mr. Garrod had engaged in considerable effort in seeking to establish that Sarki's are a particular social group and that members possess a well-founded fear of persecution. However, if I had found the appellant to be a member of the caste and that he was a member of a particular social group, the evidence relied upon would have come nowhere close to the required threshold.
66. The appellant accepts that he received training from the authorities and worked in a hospital. His primary observations as to discrimination concerned higher caste people not wishing to engage with him or being uncomfortable in his company.
67. Mr. Garrod accepted that the caste system was abolished in 1963. However, he drew my attention to certain documents which he detailed established the nature of ongoing discrimination. The first document comprised undated news articles from Deutsche Welle. There was reference to two incidents where marriages between 'dalits' and higher

caste spouses led to deaths. The police were confirmed to have filed separate charges against 31 people in respect of the deaths. This is suggestive of sufficiency of protection. The news articles refer to dalits still facing prejudice 'when entering sacred places and temples, gathering water, and at social gatherings.' An article refers to the then ruling party seeking to provide justice for the dalit community and seeking to ban discrimination.

68. A second document is a news article from the Nepali Times, dated 29 June 2021, which details the difficulty a lower caste female experienced in securing accommodation. It is reported that consequent to the commencement of a police investigation in Kathmandu in respect of the female's complaint, a minister sought to adversely interfere.
69. The third document relied upon was an article in the Indian Institute of Dalit Studies. My attention was not drawn to any particular paragraphs. This issue was published in 2009 and does not address developments in Nepal over the last decade.
70. Additional documents filed with the Tribunal include a Bachelor degree thesis dated 2020 and an undated agenda from the sub-commission on the promotion and protection of human rights working group on minorities (Geneva),
71. As recognised by Mr. Garrod it had proven difficult at short notice for the appellant to secure more detailed evidence. He was right to recognise the existing problem. The evidence in its present state is simply insufficient to meet the required threshold to establish persecution. It fails to identify any cogent ground for establishing that there is an insufficiency of protection existing in Nepal: *Horvath v. Secretary of State for the Home Department* [2001] 1 A.C. 489.
72. In the circumstances the appellant's asylum appeal is refused as is the appellant's human rights (article 3) appeal.

Humanitarian protection

73. For the reasons detailed above and again observing that the appellant is a wholly unreliable witness, the appeal on humanitarian protection grounds is dismissed.

Article 8 ECHR

74. Mr. Garrod did not expressly rely upon article 8 in his submissions and there is brief reference to this article of the Convention in his skeleton argument.

75. The appellant cannot succeed on article 8 grounds under the Rules. He enjoys no family life in this country and in respect of private life rights he cannot meet any of the requirements of paragraph 276ADE(1) of the Rules.
76. As for article 8 outside of the Rules, he entered this country lawfully in 2006 and therefore has established private life rights in this country over time. However, save for his unlawful employment, he has presented very limited evidence as to having integrated in this country and no other personal factors can properly be placed in his favour in the relevant proportionality assessment. His personal circumstances come nowhere close to establishing that exceptional circumstances exist so as to outweigh the public interest in his being removed from this country.
77. In such circumstances, the appellant's human rights (article 8) appeal is dismissed.

Notice of Decision

78. I have previously decided that the decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the decision promulgated on 16 March 2020 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007 ('the 2007 Act').
79. The decision in the appeal is remade.
- (i) The appeal is refused on asylum grounds.
 - (ii) The appeal is refused on humanitarian grounds.
 - (iii) The appeal is refused on human rights grounds.
80. The anonymity order is confirmed.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 6 October 2021