



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

Appeal Number: HU/08055/2020
UI-2021-000870

THE IMMIGRATION ACTS

**Heard at Field House
On 2 August 2022**

**Decision & Reasons Promulgated
On 22 September 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**RAJ KUMAR GHALE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms R Dulay, instructed by Sam Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nepal born on 13 July 1974. He appeals against the decision of First-tier Tribunal Judge C Fern, dated 25 June 2021, dismissing his appeal against the refusal of entry clearance on human rights grounds.
2. Permission was granted by Upper Tribunal Judge Kamara on 18 January 2022 on the grounds it was arguable the judge failed to assess the existence of family life at the time the sponsor left Nepal.

3. Mr Walker conceded there was a material error of law in the decision because the judge had failed to consider the existence of family life at the time the sponsor came to the UK. Ms Dulay referred me to [60] and submitted this was a fundamental starting point which could not be read into the decision. I am just persuaded this error is material notwithstanding [71].
4. Ms Dulay also submitted the judge had failed to consider the sponsor's second witness statement in which she explained why there was no documentary evidence of financial support from 2011 to 2016. I am satisfied the three grounds of appeal disclose material errors of law.
5. Accordingly, I find the judge materially erred in law and set the decision aside. The appeal is remitted to the First-tier Tribunal to be re-heard *de novo* by a judge other than Judge Fern. None of the judge's findings are preserved.

Notice of Decision

Appeal allowed.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 2 August 2022