



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2021-001266**  
**First-tier Tribunal No: HU/50651/2021**  
**IA/02441/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 23 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**RAJ KUMAR DULAL**  
**(no anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Martin, instructed by Indra Sebastian Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 13 January 2023**

**DECISION AND REASONS**

1. The appellant is a national of Nepal, born on 13 April 1989. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant first entered the UK on 16 September 2007 as a student and was granted various periods of leave to enter and remain as a student and Tier 4 student migrant until 22 April 2015. On 3 December 2014 his leave was curtailed to end on 6 February 2015. On 3 February 2015 he applied for leave to remain outside the rules but his application was refused on 26 May 2015. He was served with removal papers on 7 May 2017 and he claimed asylum the following day. He withdrew his claim on 9 November 2017 and on 9 February 2018 applied for leave on the basis of long

residency. His application was refused on 23 July 2018. The respondent reconsidered the application but maintained the refusal decision on 20 September 2018.

3. On 21 February 2020 the appellant made a human rights claim and applied for leave to remain on the basis of his private life in the UK. His application was refused on 24 February 2021 and that gave rise to the appeal which now comes before me.

4. In the application made on behalf of the appellant it was stated that he had a family life in the UK with his twin brother Bal Dulal who was settled in the UK with indefinite leave to remain. They had both come to the UK around the same time, when aged 18, and had been together all their lives and were very close and lived together. They came from a strictly religious family in Nepal and had since turned their backs on religion. Reliance was placed upon a psychological report from Dr Costa which referred to the appellant having been diagnosed with severe depression by his GP and having suicidal thoughts and to the profound impact separation from his twin would have on him. The report referred also to the appellant's physical health problems as he had gout and a fatty liver disease brought on by the use of painkillers and previous dependency upon alcohol. It was stated that the appellant would have to go home or be homeless if he returned to Nepal and that he would have difficulty returning to his parents who lived with his grandparents following the 2015 earthquake. He would be unable to find work in Nepal, whilst in the UK he was supported financially by his twin brother. It was asserted that the appellant's removal would breach his Article 8 human rights and that there were very significant obstacles to his integration in Nepal.

5. In a statement submitted with his application the appellant set out his claim and also referred to his family life with his uncle with whom he had lived in the UK for more than 10 years, and cousins, of whom he was particularly close to one, Aaron. He stated that he had adopted the British way of life including food habits and had given up Asian food as it irritated his stomach. He was involved in charity in the UK. He was in debt and was trying to negotiate with debt collectors. He smoked and drank alcohol which was contrary to his customs in Nepal and he no longer practised the Hindu religion.

6. The respondent, in her refusal decision, considered that the appellant could access medical treatment in Nepal and that his removal would not be in breach of Article 3. The respondent considered further that the appellant's removal would not be disproportionate under Article 8.

7. The appellant's appeal against the refusal of his application was heard by First-tier Tribunal Judge Housego on 27 August 2021. The appellant relied in addition upon his relationship with his partner Nisha Thapar. The judge heard from the appellant, his brother and Ms Thapa. It was said by the appellant that he had always lived with his twin and that it was unfair to separate them, that it was through misfortune and chance that he had not been given indefinite leave like his brother and that it was not his fault that he had registered with colleges which had their licenses revoked. The appellant claimed to be dependent upon his partner and brother, both financially and emotionally, to be assimilated into life in the UK, to be unable to cope with the food and climate in Nepal and to require medical help in the UK for his gout, liver and mental health problems. He feared that his parents would make him marry someone of the same caste in Nepal and he had not told them about Ms Thapa. She was a doctor in the NHS and was likely to remain in the UK and he did not want to be separated from her.

8. The judge accepted that the appellant had established a family life with his partner and brother, although not falling within the immigration rules in that respect. He found

there to be no reason why the appellant's family life with his partner could not continue in Nepal as she would be able to find work as a doctor in Nepal and was only on a temporary work visa in the UK. His family life with his brother was likely to end at some point and in any event that family life was to be accorded little weight. The judge considered that the appellant had overstated his difficulties with his parents and that there was every reason to believe that they would be supportive of him if he returned to Nepal. The judge noted that the appellant was not currently receiving treatment or medication for his mental health problems and that the psychological report and GP's letter previously submitted were not referred to at the hearing. The judge considered that there was no evidence that he could not receive treatment for his physical ailments in Nepal. He noted that the appellant had an HND qualification in the UK which would assist him in finding work in Nepal and that he belonged to the highest caste. The judge found there to be no very significant obstacles to the appellant's integration in Nepal, that there were no insurmountable obstacles to family life being continued with his partner in Nepal, that it was not disproportionate to treat the appellant and his brother differently since his brother met the immigration rules and he did not, and that there were no exceptional circumstances outside the immigration rules. He accordingly dismissed the appeal.

9. The appellant sought, and was granted, permission to appeal to the Upper Tribunal.

### **Hearing and Submissions**

10. The matter came before me for a hearing and both parties made submissions.

11. Mr Martin submitted that the judge had failed to apply the guidance in Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39 and had failed to consider and make findings on the impact of the appellant's removal on his brother and partner. With regard to the appellant's brother, the judge had gone too far in speculating and had erred by looking to the future rather than considering the situation at the date of the hearing. With regard to Ms Thapa, she was on a path to full qualification as a doctor and would be able to stay in the UK and the judge ought to have taken account, when considering the public interest in removal, of the need for healthcare workers in the UK. Mr Martin submitted that the judge had failed to put sufficient weight on the medical evidence and consider the care and support the appellant required from Ms Thapa and his brother and had erred by failing to consider the cumulative impact of the diverse factors upon which the appellant relied.

12. Ms Isherwood submitted that there were no errors of law in the judge's decision. She raised the point that much emphasis had been put on the appellant's relationship with Ms Thapa yet she had not been referred to at all in his application. There was only limited evidence about the relationship and the judge could only make a decision on the evidence he had before him. Ms Thapa only had a temporary visa and it could not be said if she would stay or return to Nepal. The judge, bringing everything together, considered all of the evidence and gave it the weight he thought appropriate.

13. Mr Martin, in response, reiterated the points previously made.

### **Discussion**

14. It is asserted that Judge Housego erred by failing to consider the impact upon the appellant's brother and partner of his departure from the UK, contrary to the decision in Beoku-Betts. However I do not agree. At [8] the judge directed himself on the guidance in Beoku-Betts and he went on, at [40], [42], [46], [48] and [49] to consider the family and private lives of the appellant's brother and partner in accordance with

that guidance. As Ms Isherwood properly submitted, the evidence before the judge was very limited and he was only able to make a decision on the basis of what was before him.

15. There was no real evidence of the nature and strength of the relationship between the appellant and Ms Thapa aside from the assertion that such a relationship existed. Although the appellant, in his statement, claimed to have met Ms Thapa in 2019 and started living with her in March 2020, she was not mentioned at all in his application of 21 February 2020 and neither was any suggestion of such a relationship made to the respondent prior to the refusal of his application on 24 February 2021, or prior to the filing of documents for the appeal. Ms Thapa's statement made only a brief reference to the relationship at the end when she said that she was very committed to the relationship and that they would marry when they could. Further, as Ms Isherwood submitted, the judge had regard to the fact that Ms Thapa's visa for the UK was currently only temporary, that she was not established in a career yet and had been in employment in the UK for only a short amount of time. In addition, as Ms Isherwood pointed out, Ms Thapa's evidence was that she had come to the UK to study a Masters with the intention, at that time, of returning to Nepal when her studies finished. There was therefore very limited information upon which the judge could consider the impact of the appellant's removal on Ms Thapa if she remained in the UK and he properly went on to consider the option of their family life continuing in Nepal, finding, at [46], that there was no reason why family life could not be maintained in Nepal, where Ms Thapa would most likely be able to find work as a doctor. On the information available to him, the judge gave full and proper consideration to all relevant matters and was entitled to make the findings that he did.

16. As for the impact of the appellant's removal on his twin brother, there was again very limited evidence before the judge to enable him to make a detailed assessment or to consider that to be a weighty matter. Other than stating in his statement that he could not imagine being apart from the appellant there was no evidence from Bal Dulal as to the impact the appellant's removal would have upon him. The grounds criticise the judge for considering the situation in the future rather than at the date of the hearing, as he did at [48], but it seems to me that an assessment of the impact upon him of the appellant's removal clearly necessitated looking to the future and the judge was accordingly fully and properly entitled to conclude as he did. I find no merit in the challenge to his findings in that regard.

17. Other than the question of the impact of the appellant's removal on his brother and Ms Thapa, the grounds assert that the judge failed to consider the difficulties the appellant would face in Nepal including the impact on his mental health and the loss of the support from his brother and partner. However the judge set out at length all the concerns raised by the appellant and addressed each in turn, including his mental health and physical ailments, his issues with his parents in Nepal, his religious issues, his ability to find employment, his means of support and the separation from his brother and from his partner if she chose to remain in the UK without him. The judge considered the fact that the appellant and his brother came to the UK around the same time, that they had always lived together, and that his brother had been granted ILR whereas he had not, and again addressed all of these matters. There is no merit in the suggestion that there was a failure by the judge to have due regard to all relevant matters when on the contrary all matters were considered both individually and together. The judge accorded the various factors the weight that he considered appropriate. The grounds are essentially a disagreement with the weight he gave to those factors, whereas that was a matter for him. He was perfectly entitled to reach the conclusions that he did.

18. For all of these reasons I do not consider that any error of law arises from Judge Housego's decision. His decision was based upon a full assessment of all the evidence and cogently reasoned findings and conclusions. He was entitled to reach the decision that he did on the basis of the evidence available to him.

**Notice of Decision**

19. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

16 January 2023