



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

**Case No: UI-2022-005236**  
**First-tier Tribunal No:**  
**HU/55995/2021**  
**IA/14654/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Amir Gurung**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**DECISION AND REASONS**

1. By the decision of Upper Tribunal Judge Owens issued on 5.12.22, the appellant was granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Howard) promulgated 13.9.22 dismissing his appeal against the respondent's decision refusing his human rights claim.
2. In summary, the grounds had argued that the First-tier Tribunal failed to make appropriate article 8 ECHR findings and misapplied the Devaseelan principle.
3. The respondent's Rule 24 Reply, dated 19.12.22, did not oppose the appeal and accepted that the First-tier Tribunal had materially erred for the reasons set out in the grounds. The respondent expressed no view as to whether the matter should remain within the Upper Tribunal or be remitted to the First-tier Tribunal.
4. By directions issued on 21.7.23, Upper Tribunal Judge Perkins considered that "the appeal can be determined fairly by setting aside the decision complained of and directing that the appeal be redetermined in the First-tier Tribunal." Judge Perkins directed that, "Any party objecting to this course must serve a response to this Memorandum and Directions no later than 14 days after this notice is sent and if no such notice is received the Tribunal is likely to determine the appeal as indicated."
5. No such objections have been received by the Upper Tribunal.

6. In the circumstances, the Upper Tribunal finds that the impugned decision of the First-tier Tribunal is flawed for material error of law in the manner alleged in the grounds, so as to require it to be set aside and remade.
7. Having regard to the likely necessity to remaking the findings and take account of current circumstances for the article 8 ECHR proportionality balancing exercise, the appropriate course is to remit this matter to the First-tier Tribunal with no findings preserved.

**NOTICE OF DECISION**

**The appellant's appeal to the Upper Tribunal is allowed.**

**The decision of the First-tier Tribunal is set aside for error of law.**

**The remaking of the decision is remitted to the First-tier Tribunal.**

**I make no order for costs.**

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20 November 2023**