



IN THE UPPER TRIBUNAL
IMMIGRATION & ASYLUM CHAMBER
000923

Case No: UI-2023-

First-tier Tribunal No: HU/54270/2021

THE IMMIGRATION ACTS

Decision and Reasons

Issued:

On 21st of December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

BHARAT LAL GURUNG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Heard at Field House on 8 December 2023

Representation:

For the Appellant: Mr E Wilford, Counsel, instructed by Everest Law Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

REMITTAL DECISION

Anonymity

1. No anonymity order was made by the First-tier Tribunal. Considering the facts of this case and the circumstances of the appellant and his family, I can see no reason to make an order.

Background#

2. This is a Gurkha case. In my decision of 23 August 2023, I found that First-tier Tribunal Judge J Hamilton (“the judge”) materially erred in law in dismissing the appeal brought by the appellant, a citizen of Nepal, against a decision of the respondent dated 8 February 2021 refusing his application for Indefinite Leave to Enter.
3. I preserved the judge’s findings at [34] to [36] of his decision and issued directions to facilitate a rehearing of the appeal in this Tribunal. The resumed hearing of this appeal was first listed on 27 October 2023. Mr Wilford appeared on behalf of the appellant and Ms Lecointe appeared on behalf of the respondent. The hearing was adjourned as the representatives appeared on the mistaken view that the appeal had been listed for an error of law hearing. Whilst, Mr Wilford confirmed that he was nonetheless ready to proceed, he did not oppose the adjournment application made by Ms Lecointe, who appeared before me in extenuating circumstances and was not in a position to proceed. The hearing was adjourned by agreement of the parties to 8 December 2023.
4. At the hearing on 8 December, Mr Wilford appeared on behalf of the appellant and Mr Terrell appeared on behalf of the respondent. Mr Terrell informed the Tribunal that the appellant’s brother, Sivilal Gurung, (who is represented by the same solicitors), has an appeal before the First-tier Tribunal, which was adjourned on 14 November 2023 and stayed for six months’ to await the outcome of this appeal.
5. Whilst Mr Wilford urged me to hear the appeal, as this appeal and the appeal of Sivilal Gurung concerns close family members and raises common issues of fact and law, I agreed with Mr Terrell that, in view of the overriding objective, it was in the interests of justice that the appeal of the appellant and his brother should be heard together. I thus acceded to Mr Terrell’s application to remit the appeal to the First-tier Tribunal, and indicated to the parties that I would have taken the same view had it been known to the Tribunal at the hearing on 27 October, that the hearing of Sivilal Gurung’s appeal before the First-tier Tribunal was due to be heard very soon thereafter.
6. In the circumstances, this appeal is remitted to the First-tier Tribunal for rehearing taking account of the preserved findings of the judge identified at [3] above. Pursuant to its case management powers under rule 4 of its procedure rules, the First-tier Tribunal shall consolidate this appeal with that of Sivilal Gurung (Appeal Number: HU/53092/2023), and the appeals should be heard together. It is a matter for the First-tier Tribunal to consider whether the appeals can be expedited for hearing. I would encourage that course given the date of the respondent’s refusal in this case.

Notice of Decision

7. The decision of the First-tier Tribunal is set aside with preserved factual findings as identified above. The rehearing of the appeal can be heard by any judge other than Judge Rae-Reeves and Judge J Hamilton.

No anonymity direction is made.

Signed

R.Bagral

Deputy Upper Tribunal Judge Bagral
Immigration & Asylum Chamber
11 December 2023