



**IN THE UPPER TRIBUNAL**

Case No: UI-2023-001183

**IMMIGRATION AND ASYLUM  
CHAMBER**

First Tier Tribunal No:  
HU/51147/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 14 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SUSHMA PUN**

**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr M Rana, Counsel, instructed by Gull Law Chambers

For the respondent: Mr D Clarke, Senior Presenting Officer

**Heard at Field House on 2 August 2023**

**DECISION AND REASONS**

## **Introduction**

1. This is the re-making decision in respect of the appellant's appeal against the respondent's refusal of her human rights claim.
2. The appellant is a citizen of Nepal, born in November 1998, and the adult daughter of Captain Ram Kumar Serpuja Pun, a serving soldier in the 1<sup>st</sup> Battalion, The Royal Gurkha Rifles ("the sponsor"). In October 2021 the appellant made an application for entry clearance to join the sponsor in this country. That application was treated as a human rights claim and was refused on 18 January 2022. The respondent concluded that the appellant could not satisfy the requirements of Appendix Armed Forces of the Immigration Rules because she was over 18 at the time. It was also said that the appellant was not in fact related to the sponsor.
3. The First-tier Tribunal dismissed the appellant's appeal against the respondent's refusal. At that stage the respondent conceded that the appellant was related to the sponsor, as claimed. The judge found the evidence before her to be credible. Although the respondent had accepted the fact of family life prior to the hearing, the judge ultimately concluded that there was no such protected right, despite making appeared to point in the opposite direction. In addition, the judge concluded that there were no exceptional circumstances.
4. In my error of law decision, promulgated on 26 June 2023 and annexed to this re-making decision, I found that the judge had materially erred in law in two ways. Firstly, she failed to resolve the obvious tension between the respondent's position on family life, her findings, and the conclusion that there was no family life. Secondly, she failed to conduct a legally adequate proportionality exercise and thus there was no sustainable alternative conclusion on the Article 8 claim. The judge's decision was set aside and I expressly preserved the judge's favourable findings on the sponsor's credibility.

## **Agreed and contentious issues**

5. In light of the judge's decision, my error of law decision, and a useful discussion at the outset of the resumed hearing, the following matters can be stated:
  - (a) The relationship between the appellant and the sponsor is accepted;
  - (b) The existence of family life between the appellant and the sponsor is accepted;
  - (c) The appellant accepts that she cannot satisfy the requirements of Appendix Armed Forces because she was 22 years old when she made her application;
  - (d) This case does not engage the well-known historic injustice principle because the sponsor is still a serving soldier.
6. It follows that the core contentious issue in this appeal is whether, in all the circumstances, the respondent's refusal of the appellant's human rights claim constitutes a disproportionate interference with the protected family life.

### **The relevant legal framework**

7. I have already alluded to the Immigration Rules and the appellant's acceptance that she cannot satisfy them. In light of this, there is no need to set out the relevant provisions here.
8. The relevant principles relating to Article 8 and the assessment of proportionality are, for the purposes of this appeal, set out in the judgment of Lord Reed, JSC, in R (Agyarko) v SSHD [2017] UKSC 11; [2017] Imm AR 764. With reference to [46]-[60], the following propositions can be stated:
  - (a) The respondent is entitled to make Immigration Rules as an expression of her policy and practice on immigration matters and these Rules are designed to be compatible with Article 8 in all but exceptional cases;

- (b) In an appeal, “considerable” or “appropriate” weight is to be given to the relevant Rules at a general level;
- (c) If the result of a refusal of leave to remain or entry clearance would result in unjustifiably harsh consequences, it can be said that there will be exceptional circumstances (which is not the same as an exceptionality test), which would permit the individual concerned to succeed in their appeal;
- (d) The assessment of whether such consequences would come about is a fact-sensitive exercise;
- (e) The “ultimate question” is whether a “fair balance” has been struck between the competing public and individual interests.

### **The evidence**

9. I have considered relevant evidence contained in the bundles provided by the appellant and the respondent for the First-tier Tribunal hearing, together with the appellant’s supplementary bundle, indexed and paginated 1-109.
10. Mr Clarke provided me with the respondent’s policy guidance documents, “Family life (as a partner or parent) and exceptional circumstances”, version 19.0 published 15 May 2023 and “HM Forces: partners and children”, version 5.0 published 8 February 2018.
11. The sponsor and his wife (Ms Budhathoki, the appellant’s step-mother) attended the hearing. The sponsor gave oral evidence, adopting his two witness statements and answering questions from Mr Rana, Mr Clarke, and myself. Ms Budhathoki was not called on the basis that neither representative had any questions for her. Mr Clarke agreed that her witness statement could stand unchallenged.
12. The sponsor’s two witness statements set out the appellant’s background and the steps he had taken to ensure her care in Nepal

following his divorce from the appellant's mother in 2001 and his legal assumption of sole custody thereafter.

13. In his oral evidence, the sponsor answered all questions with clarity and in a straightforward manner. He expressed his concerns over the position of young women in Nepal generally, as regards security. He felt emotionally stressed by the fact that he was unable to ensure her security by being together in the same country. He confirmed that the appellant has now completed her Bachelor's degree in business and had been intent on starting a Master's degree in Nepal. The appellant would be able to live with him, his wife, and their youngest daughter, who is now approximately 15 months old. He had obtained army family accommodation (SFA) when he got married in December 2020. The sponsor accepted that the appellant had not yet attempted to make any visit visa applications. He confirmed that he had completed five tours of Afghanistan during his service and that his service runs until 2026.
14. Mr Clarke asked a number of questions. The sponsor told me that in order to undertake a Master's degree, the appellant would have to move from where she lives now, Pokhara, to Kathmandu, an 8-9 hour drive away. The family have no ties in that city. He believed it would not be secure for her to live in the capital. At present, the appellant lives in accommodation owned by the sponsor's late sister's husband. She shares this with three cousins, aged 32, 29, and 26, the youngest of whom is female and the eldest being married with a child.
15. In re-examination, Mr Rana asked the sponsor about the appellant's job prospects in Nepal. The sponsor regarded these as being "very difficult", even with a degree. He stated that there was "no guarantee" about getting a job. He told me that he had undertaken some research himself on the subject. When asked about an internship undertaken by the appellant previously, the sponsor said that voluntary work might be possible, but obtaining permanent paid employment was a problem.

## **Submissions**

16. Both representatives assisted me with concise submissions. These are a matter of record. In brief summary, Mr Clarke emphasised the accepted position that this was not a historic injustice case because the sponsor was still a serving soldier. The sponsor had not sought to try and bring the appellant to the United Kingdom sooner because of his active service commitments and lack of family accommodation. This was a case concerned with exceptional circumstances and whether the refusal to allow the appellant to the United Kingdom would result in unjustifiably harsh consequences.
17. Mr Clarke set out a number of considerations which he submitted were relevant and I will deal with these later in my decision. In essence, he submitted that even when viewed cumulatively, there was not enough to demonstrate unjustifiably harsh consequences. He quite fairly accepted that there was no suggestion the sponsor could be expected to go and live in Nepal at this point in time given his continuing service obligations until 2026.
18. Mr Rana urged me to find all of the evidence credible, as had the previous judge. He placed emphasis on the best interests of the sponsor's youngest daughter, who had not yet met the appellant face-to-face. The sponsor had only been able to try and bring the appellant to the United Kingdom once he had secured appropriate accommodation after his marriage in 2020. The sponsor held genuine concerns over his daughter's security if she were to move to Kathmandu, and this was relevant. Whilst there was no independent evidence on the issue of job prospects, the sponsor's evidence was deserving of weight. It was suggested that there was an "element" of historic injustice in this case.
19. Following submissions, I announced that I would be reserving my decision.

## **Findings**

20. In making relevant findings of fact and reaching my conclusions, I have considered the evidence as a whole.
21. First and foremost, I, like the judge below, find the sponsor's evidence to be entirely credible. It has always been consistent, plausible, and presented in a perfectly straightforward manner. There has been no substantial challenge to his evidence at any stage.
22. In addition, I find the evidence contained in the appellant's witness statements also to be credible. It sits well with that of the sponsor's and there is no proper basis for me to reject any aspect of it.
23. I also find the written evidence of Ms Budhathoki to be credible. I mean no disrespect when I say that it adds little to the content of the evidence from the sponsor and the appellant.
24. I find that the family history is as set out in the sponsor's first witness statement. In short, I find that the sponsor enlisted in the British Army in 1999 and his service runs until 2026. The appellant's mother effectively abandoned the family unit in approximately 2001 and the sponsor obtained a divorce in that year. He was also granted sole custody of the appellant. I find that the sponsor took steps to ensure that the appellant was cared for and raised in a secure environment, making arrangements for her to live with various family members over the course of time. It is plain that at all stages, it was the sponsor who had sole responsibility for his daughter's upbringing.
25. I find that the sponsor wanted to bring the appellant to the United Kingdom whilst she was still a child, but was not in a position to do so because of the commitments of his service - for obvious reasons, he was outside of this country for numerous and extended periods of time - and the absence of appropriate accommodation until he got married in December 2020.
26. It is plain from the evidence of the sponsor and appellant that they wish to be reunited and that this should be in the United Kingdom. I find that the sponsor has born a significant emotional burden for almost 20

years now, since assuming sole parental responsibility for the appellant when she was aged just 3 years. On any view, it is entirely understandable that he wishes to have his daughter with him in this country to try and make up for what he described as the “missing family life”. Similarly, I accept that the appellant wants to be with her father in the United Kingdom. She has grown up without, in effect, a parent being physically present in her life, albeit that the sponsor has done all he could to ensure her security and happiness.

27. I find that the appellant has now completed her Bachelor’s degree. I accept that it is her intention to undertake a Master’s degree, whether that be in Nepal or, if this appeal were successful, the United Kingdom. I have little doubt that she would be anything other than successful in relation to such a course of studies. Given these proceedings, it is understandable that she has not yet committed to a course in Nepal.
28. As to the appellant’s current living circumstances, I find as follows. She is still residing in accommodation owned by the sponsor’s late sister’s husband. That accommodation is secure. The sponsor duly pays rent on the appellant’s behalf. The appellant has her own separate accommodation within the building. Also living in the building are three adult cousins, aged between 26 and 32. The youngest is female, and the eldest is married and has a child. I accept that none of the cousins are presently employed. There is no suggestion that the appellant is at any foreseeable risk of being forced to move out of her accommodation.
29. The appellant does not suffer from any health conditions.
30. In respect of further possible studies in Nepal, there is a lack of evidential clarity. Whilst I accept the sponsor’s evidence that he honestly believes the appellant would have to go to Kathmandu to undertake a Master’s degree, there is no independent evidence of this. There is no evidence relating to the provision of such courses in Pokhara, which is the second most populous city Nepal after Kathmandu. It is, in my judgment, reasonable to suppose that Master’s degrees are provided in that city.



31. I accept that Master's degrees must be available in Kathmandu. I accept the sponsor's genuine belief that young women may face insecurity in the capital. However, in the absence of any independent evidence (perhaps, for example, addressing the wider issue through country information reports, or expert evidence, or suchlike), it is difficult for me to conclude that the appellant in particular, would face significant insecurity, such that a relocation to Kathmandu would not be a reasonable option in terms of further studies. In light of the evidence as a whole, I find that that option would reasonably be open to the appellant, should she wish.
32. I turn to the question of employment prospects. In keeping with my overall conclusion that the sponsor has provided honest evidence, I find that his subjective view of the appellant's employment prospects in Nepal are genuinely held. I accept that he had probably undertaken a degree of limited research of his own. It is also the case that he will be aware of the general economic climate in that country through the media and quite possibly familial and/or social contacts there. I find that the sponsor honestly believe that it will be very difficult for the appellant to find relevant/suitable/appropriate employment in Nepal.
33. I am prepared to accept, in general terms, that Nepal faces significant economic challenges and this will, in all likelihood, involve issues relating to employment. However, and with respect to the sponsor's honestly held view, it is a relatively significant step for me to then find that there are no realistic prospects of relevant employment for an individual such as the appellant, who is educated to degree level and speaks English. I have not been provided with country information or expert evidence relating to, for example, the level of qualifications necessary for particular types of employment, any specific barriers faced by women, or the geographical locations of certain types of employment. Further, I do not have any such independent evidence relating to the security of young women who might need to live alone in, for example, Kathmandu, in order to secure and maintain employment.

34. Taking the evidential picture as a whole, I am unable to find it to be more likely than not that a young woman in the appellant's circumstances has no realistic prospect of securing reasonable employment at all, or that, if she did, it would involve putting her personal safety at risk.
35. I find that the sponsor's youngest daughter has not yet met the appellant face-to-face. I accept that they have seen each other using online communication platforms. Given the youngest daughter's age, it is difficult to find that there is a close bond between the two. Having said that, I certainly accept that the appellant wishes to establish such a bond, if possible, and that her younger sister would benefit from this.
36. I accept that the appellant has a good relationship with her step-mother.
37. Finally, I find that the sponsor is able to provide adequate maintenance and accommodation for the appellant if she in fact came to the United Kingdom.

### **Assessment and conclusions on Article 8(2)**

38. I now turn to apply my findings of fact to the relevant legal framework relating to Article 8, as set out earlier in my decision.
39. In the circumstances of this case, the applicable principles set a high standard in order for the appellant to succeed.
40. I proceed to consider the various considerations which inform my assessment of proportionality.
41. There is a general public interest in the ability of the respondent to maintain effective immigration control. This consideration carries significant weight. In addition, the accepted inability of the appellant to satisfy Appendix Armed Forces enhances that weight. As a matter of policy, the respondent has chosen to differentiate between minor children of serving soldiers and those who are adults. The latter fall outside the ambit of the Rules.

42. As has been observed earlier, this is not a historic injustice case. The sponsor is a serving soldier and that fact takes this case outside of the well-known principle which, if it had been applicable, would in all likelihood have led to the success of the appeal. For the avoidance of any doubt, I do not accept Mr Rana's suggestion that there was an "element" of historic injustice. I cannot see any proper attribution of fault to the respondent in respect of the sponsor's inability to attempt to bring the appellant to the United Kingdom sooner than he did. The sponsor, and in turn the appellant, were placed in a difficult situation by virtue of the mother's actions and the former's standing as a long-distance single-parent thereafter. However, that was not a result of actions or inactions by the respondent.
43. The sponsor was unable to try and bring the appellant to join him in the United Kingdom sooner than, at the earliest, late 2020/early 2021, although he would no doubt have wished to do so if it was a feasible option. The reasons why it was not possible are, I conclude, twofold: firstly, he was a soldier on active service and was, for obvious reasons, outside of United Kingdom for numerous and extended periods of time and thus unable to care for a child; secondly, as an unmarried soldier, he was not entitled to family accommodation. The inability to attempt family reunification sooner arose due to the sponsor's (extremely commendable) service on behalf of the United Kingdom, together with his unmarried status.
44. Although unable to bring the appellant to this country whilst she remained a child, the sponsor did of course take on responsibilities of being a single parent, albeit across a very significant geographical divide. Following the abandonment by the appellant's mother in 2001, the sponsor did everything possible to ensure the appellant's well-being. Fortunately, his efforts and the arrangements put in place were effective, stable, and did, to a significant extent, enable the appellant to have a good upbringing. She was cared for by close family members over the years and was able to have a good education. Her living circumstances

remain secure and appropriate to date. In this regard, her current circumstances do not add any material weight to her case.

45. I take into account the emotional upset caused to the appellant by her mother's abandonment at an early age. I take full account of the appellant's quite understandable desire during her childhood (and to date) to be reunited with her father in this country. I take account of the undoubted emotional difficulties which the appellant will have suffered over time as a result of the separation, although it is right to say that the sponsor had enlisted in the British Army soon after her birth and would inevitably have been separated from her for fairly lengthy periods of time during her childhood in any event. In light of the overall history, what one might describe as the emotional consideration carries fairly significant weight.
46. I also of course take full account of the sponsor's emotional circumstances and understandable wish to have the appellant with him in this country. He too will have felt the distress of being separated from his daughter over many years. Although lengthy periods will have been spent on active service, there will have been a material difference between, on the one hand, having the appellant living in the United Kingdom and being able to be with her whilst on leave, and on the other, the situation in which she has had to remain in Nepal throughout. I therefore place appropriate weight on the sponsor's own Article 8 rights.
47. I am bound to note the absence of any attempt by the appellant to apply for a visit visa. It seems to me as though such a course of action was, and still is, a viable option in terms of ensuring a degree of face-to-face family contact in this country (see further, my Postscript, below). I am not prepared to accede to Mr Rana's rather tentative suggestion that visit visa applications are, in effect, routinely refused and that there is no realistic prospect of the appellant obtaining entry clearance.
48. On my findings of fact, the appellant is not in a position of being unable to secure reasonable employment, or, potentially, further academic studies. Whilst these are not necessarily easy options, the

evidence has not established significant obstacles and this aspect of her claim does not, in my judgment, carry any substantial weight.

49. I take into account the desire of the appellant to establish a close relationship with her younger sister and the best interests of the latter in terms of a reciprocal relationship. The possibility of visits would ameliorate the present difficulties. The use of online video platforms is also an appropriate means of communication. Whilst I attach appropriate weight to this factor in recognition that such forms of contact are not an equivalent to daily, face-to-face contact, it is not in my judgment a significant consideration.
50. The fact that the appellant speaks English and would be adequately maintained and accommodated if she were to come to the United Kingdom are neutral considerations.
51. I do not know whether any thought has yet been given to the possibility of the appellant applying to come to the United Kingdom as a student. This is not a relevant consideration for me in these proceedings.
52. Bringing all of the above together, and emphasising the cumulative nature of my assessment, I have concluded that the appellant has failed to demonstrate that the refusal of her human rights claim would lead to unjustifiably harsh consequences. Whilst there are undoubtedly factors weighing in her favour (incorporating of course those pertaining to the sponsor's and younger sister's interests), the particular circumstances of this case are not, with the best will in the world, sufficiently strong to outweigh the public interest considerations resting on the respondent's side of the balancing scales. It has to be said that the relative stability and, to date, educational success enjoyed by the appellant has to a large extent been down to the sponsor's dedication over the years.

### **Anonymity**

53. There has been no anonymity direction made in these proceedings to date. There is no basis for me to make such a direction now, nor has there been any application to do so.

### **Postscript**

54. In years past, judges would occasionally make what were described as “recommendations” in cases where, applying the relevant legal framework, an appeal fell to be dismissed, but there were thought to be circumstances which might lead the respondent to consider exercising her residual discretion and grant a form of leave to enter or remain. It is right to say that such recommendations were more common prior to the coming into force of the Human Rights Act 1998 in October 2000.
55. In the present case, applying the appropriate legal framework as it stands, the respondent’s decision is not disproportionate. This is on the basis that the threshold for success is high (exceptional circumstances/unjustifiably harsh consequences).
56. The sponsor has been, and remains, an individual who has, on any view, provided a very significant public service to the United Kingdom over the years. This has included no fewer than five tours of duty in Afghanistan. In addition to this, he was, in effect, a single parent who did all he could (with undoubted success) to ensure that the appellant, who was until November 2016 a child, had a secure upbringing in Nepal.
57. I would urge the respondent to at least consider exercising her residual discretion in this case.
58. At the *very least*, I would urge any future decision-maker to consider any application for entry clearance as a visitor which may be made by the appellant very carefully indeed. Ordinarily, an unsuccessful application for settlement would be likely to count against the success of a visit visa application. However, it rather seems to me as though the appellant does have strong ties in Nepal and her sponsor has impeccable

credentials. It would seem to me extremely unlikely that the sponsor would permit his daughter to overstay any leave to enter.

**Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.**

**The decision in this appeal is re-made and the appeal is dismissed.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
Dated: 7 August 2023**

**ANNEX: THE ERROR OF LAW DECISION**

**IN THE UPPER TRIBUNAL**

Case No: UI-2023-001183

**IMMIGRATION AND ASYLUM**

**CHAMBER**

First-tier Tribunal Nos:

HU/51147/2022

IA/01796/2022

**THE IMMIGRATION ACTS**

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**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

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**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent



## **Representation:**

For the Appellant: Mr P Rana, Counsel, instructed by Gull Law Chambers Ltd

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

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

## **DECISION AND REASONS**

### **Introduction**

- 1.** The Appellant appeals against the decision of First-tier Tribunal Judge Swinnerton (the judge), promulgated on 10 January 2023, which dismissed the Appellant's appeal against the Respondent's refusal of the Appellant's human rights claim.
- 2.** The Appellant is a citizen of Nepal and the adult daughter of a serving soldier in the 1<sup>st</sup> Italian, The Royal Gurkha Rifles, Captain Ram Kumar Serpuja Pun (the Sponsor). In October 2021 the Appellant made an application for entry clearance to join the Sponsor in this country. That application was treated as a human rights claim and was refused on 18 January 2022. The Respondent concluded that the Appellant could not satisfy the requirements of Appendix AF (Armed Forces) of the Immigration Rules because she was over 18 at the time. It was also said that the Appellant was not in fact related to the Sponsor.
- 3.** At the hearing before the judge, the Respondent conceded the familial relationship. The Sponsor attended the hearing and gave evidence. The judge found his evidence to be entirely credible. His evidence included an account of his service in the British Army, his divorce from the Appellant's mother and her (the mother's) departure from the family home in order to form a new relationship with another man, leaving the Appellant effectively alone in Nepal. The Sponsor had had to travel on deployment for significant periods of time. He had put in place arrangements for the Appellant to reside with his parents and, following

their passing, with a paternal aunt and as at the date of hearing, the husband of the Sponsor's deceased sister. The Sponsor had provided financial and emotional support at all material times.

4. The Appellant was progressing through a university degree. At [19] of his decision, the judge found that the Appellant was doing well in her studies and had family members in Nepal that could offer her with support. At [20], the judge acknowledged that the Respondent accepted the existence of family life between the Appellant and the Sponsor, and the existence of emotional ties. However, the judge then immediately went on to state that,

“I do not accept that the familial and emotional ties between the sponsor and the Appellant are over and above the normal emotional ties or that there are exceptional circumstances in this case that would render refusal a breach of Article 8 of the ECHR. I do not find that the decision of the Appellant is disproportionate”.

(Reference to the Appellant in the final sentence is clearly an error: this should have been reference to “the Respondent”).

5. The appeal was accordingly dismissed.

### **The grounds of appeal**

6. The concise grounds of appeal assert that the judge made findings against the weight of the evidence and had failed to provide adequate reasons.

### **The hearing**

7. At the hearing Mr Rana relied on the grounds. Mr Melvin emphasised the inability of the Appellant to meet the Rules as regards Appendix AF and submitted that there was no error of law.

### **Conclusions**

- 8.** I conclude that the judge did materially err in law, essentially for the reasons set out in the grounds of appeal.
- 9.** The accepted evidence (both in terms of that stated on the face of the decision and contained in the witness statements of the Appellant and the Sponsor) pointed very strongly indeed in the existence of family life. Indeed, the Respondent's review had accepted that such family life existed and this was apparently recognised by the judge in [20]. However, immediately following that the judge concluded that there were no familial and emotional ties over and above the normal ties. That appears to be a reference to the well-known Kugathas test relating to family life as between parents and adult children (or other such relationships). Thus, there is an obvious inconsistency between an apparent acceptance of family life and a conclusion that it did not exist due to the absence of ties over and above those expected. That constitutes an error of law.
- 10.** In addition, the judge's conclusion that there were no exceptional circumstances is unreasoned and failed to engage with any or any adequate proportionality exercise. This failure is to be seen in the context of the inconsistency identified in respect of the first error of law. In the circumstances, this constitutes a second error of law.
- 11.** The errors are clearly material and the judge's decision must be set aside.

### **Disposal**

- 12.** In terms of disposal I had initially considered that I could and should go on and re-make the decision in this appeal based on the evidence before me and without the need for a resumed hearing. However, on reflection I deem it appropriate to list this case for a resumed hearing in order that I can receive further submissions from the parties and potentially additional evidence.

**13.** In saying this I acknowledge that this is not what might be described as a “classic” Gurkha case in that the Sponsor is a serving soldier. I also bear in mind that there has now been a period of approximately six months between the judge’s decision and now and updated evidence may be appropriate. I appreciate the Sponsor’s position and whilst every effort will be made to give him as much notice of the resumed hearing as possible it may be that he is unable to attend due to deployment. I make it clear that the judge’s assessment of the Sponsor being entirely credible has not been challenged in any way and I preserve the findings of primary fact made by the judge.

### **Anonymity**

**14.** There is no need for an anonymity direction in this case.

### **Notice of Decision**

**The decision of the First-tier Tribunal contained errors of law and that decision is set aside.**

**This appeal is retained in the Upper Tribunal and will be listed for a resumed hearing in due course.**

### **Directions to the parties**

- (1) No later than 21 days after this decision is sent out, the Appellant must file with the Upper Tribunal and serve on the Respondent any additional evidence relied on in her appeal;
- (2) No later than 7 days before the resumed hearing, the Respondent must file the Upper Tribunal and serve on the Appellant any additional evidence relied on.

**H Norton-Taylor**

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 21 June 2023**