



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

**Case No: UI-2023-001611**  
**First-tier Tribunal Nos:**  
**HU/56646/2021**  
**IA/15637/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued**  
**On the 19 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**PURNA BAHADUR PURJA PUN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: *Ms K McCarthy*, instructed by Everest Law Solicitors Ltd  
For the Respondent: Mr N Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 29<sup>th</sup> June 2023**

**DECISION AND REASONS**

1. These written reasons reflect the full oral decision which I gave to the parties at the end of the hearing.
2. The appellant's appeal is against the decision of First-tier Tribunal Judge Nightingale, who, in a decision promulgated on 25<sup>th</sup> October 2022, dismissed the appellant's appeal against the respondent's refusal on 4<sup>th</sup> October 2021 of clearance to settle as an adult dependent relative of his sponsoring father, a former member of the Brigade of Gurkhas. The appellant was born on 26<sup>th</sup> June 1989. The case law is well-known and I do not recite it, except to note that the Judge correctly asked herself whether there was real, committed or effective support to satisfy the test of family life which would be determinative of the appellant's appeal in a case involving Gurkhas.

**The Judge's conclusions**

3. The Judge made favourable findings in some respects for the appellant, in particular accepting at §24 that the appellant remained part of the immediate family unit of his sponsoring father and mother prior to their emigration to the UK

in 2011 (§26). The appellant had apparently spent a period of time studying in Japan, although for reasons I will come on to discuss, the Judge was concerned about the lack of evidence about that period, which the Judge regarded as “unfortunate.” The Judge found that the appellant was not entirely dependent on the sponsor during that period, as on his own account, he had worked in Japan while studying. Annex K had been introduced in 2015 and whilst the appellant was still studying in Japan, the Judge was concerned about the appellant’s delay in applying for settlement, based on his claimed dependency on his father. At §27, the Judge noted the absence of evidence of money transfers until June 2019, which she regarded as undermining the claim of the closeness of the family relationship. At §28, the Judge stated that she regarded the large but irregular payments in 2020 as not according to amounts used for day-to-day expenses. The sums could, in her view, be used for any number of reasons, including maintenance of the family property or business commitments. The Judge regarded the timing of them as intended to create the impression of dependency, which did not in fact exist. The Judge went on to consider contact records with somebody by the name of ‘Neersan.’ The Judge was unclear about who this person was, but if it were claimed to be a family member, the frequency did not suggest any level of emotional dependency. The Judge concluded, at §30, that real or effective or committed support had not been shown, for the basis of family life, needed for an Article 8 ECHR appeal.

### **The appellant’s grounds of appeal**

4. The appellant’s initial application for permission was refused, but in renewed grounds, the appellant relied on two points. The first was the Judge’s mistake of fact, when she stated at §27 that none of the documents had been translated from Japanese into English, whereas full translations had been provided and were in the Judge’s bundle. The appellant said that this was material because at §27, the Judge had made clear her doubts as to what the appellant was doing in Japan after 2016, whilst the translations confirmed the appellant’s account that he had been studying during the period from 2014 to 2018; that he was unmarried, and of very modest financial means in Japan throughout that period.
5. Second, the Judge had relied on matters not put to the sponsor specifically, in particular at §§27 to 29, namely the appellant’s delay in applying for entry clearance after the introduction of Annex K in 2015, which could have been explained by the sponsor’s ignorance of his rights; the pattern of remittances which the sponsor was not asked about; and the frequency of messages and the identity of ‘Neersan.’ Upper Tribunal Judge Sheridan granted permission on all grounds.

### **Discussion and conclusions**

6. I do not recite the parties’ submissions, except where it is necessary to explain my decision. First, I accept the respondent’s general proposition that where a matter has been clearly identified in a decision under challenge, as being disputed, a representative or a Judge need not remind a particular witness who gives oral evidence at the hearing, failing which the decision maker is taken to have now accepted what they previously disputed, or a Judge is bound to accept the issue as no longer in dispute. It is a matter for that witness to address the issue in dispute in their evidence, or for a party challenging an aspect of a decision to adduce evidence which meets the concerns which were the basis of

the contested issue. I agree with Mr Terrell's submission that the refusal letter specifically referred to the limited details about the appellant's personal circumstances, domestic arrangements or financial commitments in Nepal. In the refusal letter, the respondent accepted that the appellant might receive financial support from his father, but did not accept that there was dependency (noting that the existence of family life does not required dependency); concluded that the appellant was able to look after himself; and that the sponsor's family visits since 2011 did not demonstrate that family life continued, for Article 8 ECHR purposes. The respondent had made clear that she did not accept any claims of financial or emotional dependency.

7. I do not accept that the Judge erred in her analysis of the financial remittances. The appellant says that the Judge failed to explain why she reached the decision she had, and had the sponsor been asked further questions, he could have provided further oral evidence on what the remittances paid for. However, in this case, the respondent had been clear in her refusal letter, and the Judge adequately explained her concerns, based on the absence of remittances before 2019; their irregular pattern, when they began, and the absence of detailed evidence on what the monies were spent on, in terms of living expenses in Nepal. The Judge was entitled to rely on those concerns, and it was not incumbent on her or the respondent's representative, to ask the sponsor to elaborate, to elicit that additional evidence.
8. Two of the other challenges were to the Judge's consideration of the appellant's delay in applying for entry clearance after 2015 and the communications with 'Neersan.' Ms McCarthy argued that the latter was evidence tending to show regular contact, which the sponsor had referred expressly to at §19 of his witness statement. However, I also accept Mr Terrell's point that the majority of the calls were either "missed" or were of a very short duration, and the Judge was entitled to conclude that they added little to a claim of emotional dependency. I accept that the Judge's analysis on this issue does not disclose an error of law.
9. I turn to the one final aspect of the Judge's analysis, where I conclude that she did err in law. The Judge had considered the period of the appellant's studies in Japan; whether he had established an independent life, to the extent that he no longer had family life with the sponsor. This underpinned the Judge's concern about the period of study and the lack of translated documentary evidence relating to the same. This is not a case where the Judge omitted reference to evidence, which is no error, as a Judge is not expected to refer to each and every piece of evidence. The Judge had made a specific reference to there being no translated documents in that period, when there were, in the bundle before her. The documents are evidence (even if not ultimately accepted) of studies up to 2018 (in contrast to the Judge's findings at §§25 and 27) which might otherwise explain, at least in part, a delay in applying for entry clearance until 2020. I stress that I do not bind any remaking judge on how they assess the translated documents, but I am satisfied that the failure to take them into account makes the Judge's conclusions, based on the entirety of the evidence, as unsafe, when they were based, at least in part, on the gap in evidence for the period spent in Japan.
10. I flag at this stage, as Ms McCarthy realistically accepts and as Mr Terrell pointed out, that the evidence may cut both ways, because one of the documents translated, (albeit not considered by the Judge and therefore not one which

formed part of her analysis), is a notice of the Japanese authorities not granting an “eligibility certificate.” The document appears to suggest that the appellant applied in September 2017 for a certificate of eligibility for entry to Japan for his dependent wife. That wife is named as Pun Puria Magar Chandra. The notice of refusal in turn refers to underlying facts and a marriage certificate, which the Japanese authorities regarded as doubtful in its reliability. That evidence, not considered by the Judge, raises the question, not previously disclosed or referred to, of whether the appellant was and is married. There is no general obligation for disclosure in a statutory appeal as opposed to an application for judicial review, but I highlight the matter now because the translated documents may, as Mr Terrell succinctly put it, “cut both ways.” Nevertheless, I am satisfied that the period of study in Japan, albeit ending before the appellant’s application for entry clearance, has a potentially direct bearing on the issue of whether the appellant had, before the application for entry clearance, established an independent family life, separate from the sponsor. Mr Terrell made clear that the respondent would be taking issue with whether the appellant was and is married, on remaking. Ultimately, the Judge missed documents in what was otherwise a succinct and well structured judgment. There was nothing in the brevity of the Judge’s reasons or their clarity which amounted to an error of law.

### **Disposal of the appeal**

11. I turn to the question of how the decision on the appeal should be remade. I reminded myself of the Court of Appeal’s decision in AEB v SSHD [2022] EWCA Civ 1512 and the nature and the extent of the necessary fact-finding, (see §7.2(b) of the Senior President’s Practice Statement). Both representatives urged me to remit remaking to the First-tier Tribunal, particularly in light of the need to assess the appellant’s credibility as a whole and the new dispute as to his potential marriage. I regarded remittal as appropriate and in accordance with the overriding objective.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preserved findings. I remit this appeal to the First-tier Tribunal for a complete rehearing.**

### **Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Nightingale.**

**No anonymity directions are made.**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

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**18<sup>th</sup> July 2023**