



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

Case No: UI-2023-002109

First-tier Tribunal Nos: HU/54226/2022  
IA/06410/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 19<sup>th</sup> February 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**Chol Bahadur Thapa**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr S Jaisri of Counsel, instructed by Sam Solicitors  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 19 January 2024**

**DECISION AND REASONS**

1. The Appellant is a citizen of Nepal, whose dated of birth is recorded as 1<sup>st</sup> January 1971. On 17<sup>th</sup> January 2022 he made application for entry clearance to settle in the United Kingdom as the dependant of a former Ghurkha soldier. On 26<sup>th</sup> June 2022 a decision was made to refuse the application and the Appellant appealed. In a decision dated 26<sup>th</sup> February 2023, First-tier Tribunal Judge Rothwell dismissed that appeal. Not content with that decision, by notice dated 21<sup>st</sup> March 2023, the Appellant made application for permission to appeal to the Upper Tribunal. Though permission was refused by the First-tier Tribunal a renewed application to the Upper Tribunal was successful with permission being granted by Upper Tribunal Judge Reeds on 11<sup>th</sup> December 2023. There were four grounds:

- (1) The First-tier Tribunal Judge unlawfully failed to give reasons for the finding made at paragraph 13 of the decision of the First-tier Tribunal in which it was said, "I do not accept that the Appellant had never worked or tried to find work in all his adult life."
  - (2) The First-tier Tribunal Judge unlawfully failed to assess the evidence in relation to Article 8(1) pursuant to the highlighted test for the existence of family life in **Rai [2017] EWCA Civ 320**.
  - (3) The First-tier Tribunal Judge unlawfully erred in her assessment of financial dependency of failing to consider as part of reliance of the Appellant's circumstances the continued occupation of the family home, the First-tier Tribunal Judge found at paragraph 19 that the Appellant had been in a relationship which had now broken down, wherein there was no evidence of such a relationship.
  - (4) The First-tier Tribunal Judge unlawfully erred in setting out reasons as to the Appellant's financial and emotional evidence of dependency from the Sponsor does not amount to real (sic) committed and effective support in order to establish the continued existence of Article 8(1) family life.
2. On 17<sup>th</sup> January 2024 the Respondent filed a Rule 24 notice, conceding the appeal in these terms:
    - (i) The Respondent does not oppose the Appellant's challenge to the First-tier Tribunal decision.
    - (ii) The Respondent agrees that the judge has not properly considered whether any support from the Sponsor is real, or effective, or committed.
    - (iii) The Respondent considers that the finding at paragraph 14 of the decision is a misdirection of law.
    - (iv) The Respondent agrees that the errors in the decision material, such that the decision is unsafe.
  3. Accordingly, the Respondent proposed that the decision of the First-tier Tribunal should be set aside to be remitted to the First-tier Tribunal. The Respondent also invited the Upper Tribunal to vacate today's hearing, given those concessions.
  4. I did not agree to the hearing today being vacated because the Appellant had not had the opportunity to consider the proposals made by the Respondent with respect to whether the matter should be remitted to the First-tier Tribunal or any other directions that might arise, including whether or not there might be an application for any costs, which there has not been understandably in the circumstances.
  5. Concessions of fact are capable of being made without issue but concessions of law are ultimately matters for the Tribunal.
  6. However, I agree with the concessions made by the Secretary of State and it is not necessary for me to elaborate upon them because the Appellant had fully set out in the grounds what is complained of.

## **DECISION AND CONSEQUENTIAL DIRECTIONS**

7. In the circumstances, the decision of the First-tier Tribunal is set aside to be remade in the First-tier Tribunal on the first available date after 19<sup>th</sup> February 2024. The additional directions are that there will need to be a Nepali interpreter, the parties agree that in the allocation of points, two points is appropriate and the matter can be listed for any judge.
8. Both parties are at liberty to file and serve any additional evidence provided. Such additional evidence is filed and served no later than 4pm on Monday 12<sup>th</sup> February 2024. I should add that I made plain to the parties that if for any reason this decision is promulgated at a later date the directions still stand and the dates are not to be moved without application.



Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 February 2024**