



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

Case No: UI-2023-004850

First-tier Tribunal Nos: HU/50752/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

18<sup>th</sup> January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE B KEITH**

**Between**

**NISHAN THAPA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - SHEFFIELD**

Respondent

**Representation:**

For the Appellant: Mr M West, Counsel instructed by Gurkha Solicitors Limited  
For the Respondent: Mr T Lindsey, Senior Home Office Presenting Officer

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

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Easterman dated 13 October 2023.
2. The appellant was born on 9 January 1984 and is a citizen of Nepal. The appellant applied on 10 August 2022 to come to the United Kingdom to settle with his father (a former Gurkha soldier) and his mother. Judge Easterman refused the appellant's appeal in this case on human rights grounds. The appellant appealed to this Tribunal and permission was granted by the First-tier Tribunal on the basis that Judge Easterman may have applied the wrong test in relation to whether the Appellant was a dependent.
3. At the hearing today both advocates have had the opportunity to discuss the matter and it is accepted by the Home Office, rightly, that Judge Easterman applied the wrong legal test to this case, in particular at paragraph 42 where Judge Easterman said:

“It is very difficult to know whether these sums were actually needed by the Appellant for any particular purpose, or whether they represent a true dependency, given that he was working at the time as we have no details of his salary or his general earnings or living expenses. There is the distinction between continuing to send some financial support, and whether such support is real or effective as opposed to something additional that the Appellant could use as and when he chose, but which he did not need in order to support himself”.

The judge was deciding the issue of dependency and applied the more stringent EEA test rather than the broader non-EEA test to this case.

4. As a result, and as a result of the acceptance of that error by the Home Office, I find that there is an error of law in this case. The appellant is not in a position to argue the case today and the Home Office accepts that it would expect further evidence to be provided of the Article 8 issues pending any re-determination.
5. As a result it is my decision that this case should be remitted to the First-tier Tribunal for a rehearing. No findings of Judge Easterman are to be preserved.

***Ben Keith***

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**13 December 2023**