



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002149
First-tier Tribunal Nos:
HU/57221/2023
LH/01257/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 31 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE METZER

Between

Ms Bed Maya Limbu
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Deborah Revill, of Counsel, Everest Law Solicitors Limited
For the Respondent: Ms Amrika Nolan, Senior Home Office Presenting Officer

Heard at Field House on 25 July 2024

DECISION AND REASONS

1. The appellant, a national of Nepal, born on 31 October 1984, appeals following her appeal before a First-tier Tribunal Judge (FtTJ Jepson) who in a decision promulgated after hearing on 22 February 2024 dismissed her appeal on the basis that she did not satisfy to the relevant standard that Article 8(1) of the ECHR was engaged in relation to her relationship with the sponsor.
2. The appeal was on three grounds, for which permission was granted. I consider grounds 2 and 3, namely that the First-tier Tribunal Judge took into account irrelevant considerations and/or failed to make all the necessary findings of fact concerning the background evidence, are light-weight compared to the main ground, which relates to the First-tier Tribunal Judge's application of the relevant law. For those reasons, I do not propose to deal with grounds 2 and 3 further by reason of the decision in respect of the first ground, which I shall turn to in more

detail shortly. The second ground related to the First-tier Tribunal Judge giving limited consideration of support to the sponsor and the third ground related to an averment that the First-tier Tribunal Judge erred in the approach to the calculations of funds being provided in the face of apparent legal fees having been paid and a pension. I intend no disrespect to those grounds by concluding that it is unnecessary to make findings in relation to them because I turn to the substantial ground, namely whether the First-tier Tribunal Judge applied the wrong legal test in respect to determining whether Article 8(1) of the ECHR was engaged. The First-tier Tribunal Judge correctly identified that the relevant authority is that of **Kugathas [2003] EWCA Civ 31**, which he footnoted in the Decision.

3. Unfortunately, the First-tier Tribunal Judge misapplied the relevant law and although he cited the relevant authority, did not cite it correctly. At paragraph 32 of the Decision, although he reminded himself that the threshold is a relatively low one, he then went on to say: “That is not to say, however, the balance of probabilities standard is in some way reduced. There must be real, committed *and* effective support”. He repeated that error at paragraph 58 of the decision using the same words, namely: “There is insufficient evidence presented of real, effective *and* committed support from the sponsor – be it financial or (as a two-way process) emotional”.
4. Both parties accept that this was an error of law in that the word should have been “or” instead of “and”. I am also troubled by a reference at paragraph 32 to the First-tier Tribunal Judge talking about “any support can in analysing Article 8, be a two-way street” which arguably is really a question for the question of proportionality under Article 8(2) as opposed to whether Article 8(1) is engaged, although I accept that the way the case was presented might leave open the possibility that the First-tier Tribunal Judge was looking at the ways support went between the appellant and the sponsor. It is unnecessary to make a finding in relation to that because, as I have indicated, very properly, Ms Nolan on behalf of the respondent accepted that the First-tier Tribunal Judge made an error of law. The question then is therefore whether that error of law was material. Although it is clear that the First-tier Tribunal Judge then analysed the evidence both ways, in some detail in the paragraphs that follow and noted evidence in relation to money, in relation to accommodation and connection and contact between the appellant and the sponsor. However, I am in no doubt that once the First-tier Tribunal Judge made a clear error of law, and indeed repeated it, when finally coming to the end of the Decision, it cannot be confidently said it was not material, because he not only miscited the relevant authority but repeated the error and therefore it was not merely a typographical error, and it therefore appears that he did not apply the correct test, albeit he recognised it was a relatively low threshold. It is of interest in passing that the First-tier Tribunal Judge indicated that if he was wrong about whether Article 8(1) was engaged, he accepted refusal may well have amounted to a disproportionate breach of the Article under Article 8(2) at paragraph 59. It is unnecessary to determine the matter but that view may be of significance when the matter is reheard.
5. In all the circumstances, I find that having misapplied the law, there was an agreed error of law and I find that that error of law was material and that therefore this appeal is allowed.

Notice of Decision

6. There was a material error of law and the appeal is allowed.

7. The appeal is now remitted back to the First-tier Tribunal for full rehearing with no preserved finding of fact.

Anthony Metzger KC

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 July 2024