



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

Case No: UI-2024-003041

First-tier Tribunal No: HU/02079/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 28 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**PRABHA DEV RAI**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**AN ENTRY CLEARANCE OFFICER - SHEFFIELD**

Respondent

**Representation:**

For the Appellant: Represented by Mr Amgbah.

For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 25 October 2024**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge C J Taylor ('The Judge'), promulgated on 30 April 2024, in which she dismissed the appeal on human rights grounds against the decision dated 16 October 2023 refusing an application for leave to enter UK, made on 24<sup>th</sup> August 2023.
2. Permission to appeal was granted by another judge of the First-tier Tribunal on the 26 June 2024, the operative part of the grant, having extended time, being in the following terms:
  3. The grounds in and of themselves are in my judgement arguable, because there is little reference to the oral evidence of the sponsor at the hearing, or the Judge (in accordance with the Surendran guidelines) seeking to clarify with him the issues she later said she had regarding the evidence from the Nepalese authorities regarding the Appellant's single or marital status. Subject to the requirements of fairness, and not impermissibly "descending into the arena", FTT judges are entitled to ask their own questions of witnesses where that is necessary in order to enable them fully to understand the facts and the

issues: see for example *Hima v SSHD* [2024] EWCA Civ 680 at [61], and *Hossain v SSHD* [2024] EWCA Civ 608. It is arguable that, had these issues been explored with the sponsor, his evidence regarding the level of support he gave the Appellant not only since 2022 but also before then, could have materially affected the issue of whether Article 8 ECHR was engaged.

4. It is also arguable that the Judge improperly viewed the period the Appellant had separated from her husband before divorcing him solely through a western-orientated lens at paragraph 17. And, even if there was inconsistency and unreliability in the evidence regarding the marriage, it is relevant that the Judge did accept that the Appellant and her husband had separated since 2022. It is arguable that the sponsor's oral evidence that he was the one supporting the Appellant was not adequately taken into account along with the other evidence.
  5. If article 8 was engaged, then it is arguable that any proportionality assessment would have likely been resolved in the Appellant's favour, given the undisputed historical injustice and the lack of any matters over and above the public interest being identified by the Respondent; as set out in *Ghising and others (Ghurkhas/BOCs: historic wrong; weight)* [2013] UKUT 00567 (IAC).
  6. Evaluating all relevant matters, and having regard to the overriding objective, I am of the view that time should be extended to cover the lodging of the appeal.
  7. I grant permission on each of the grounds pleaded.
3. In a Rule 24 response dated 15 July 2024 the respondent sets out her position in the following terms: "*The ECO cannot comment on what evidence was given before the court room by the Sponsor. The burden is on the Appellant to obtain the record of proceedings to support the grounds raised and how the evidence would have made a material difference*". Mrs Arif confirmed the application is opposed.

### Discussion and analysis

4. Ground 1 asserts a material misdirection in law by the Judge in undertaking a subjective rather than objective assessment of the evidence, leading to irrational findings, but such challenge is without merit. It is not disputed that the Judge had, in addition to the documentary evidence, the benefit of seeing and hearing oral evidence being given. The criticism in the grant of permission to appeal that the Judge erred by not setting out or referring at length that evidence is also without merit, as judges are not required to set out in detail the evidence provided it is clear that it has been properly taken into account. A reading of the determination shows that is what the Judge did.
5. There is also, within this ground, a challenge to the Judge's interpretation of documentary evidence, in particular the document described as an "unmarried certificate". That document, dated 1 September 2023, states:

"This is to certify that Ms Prabha Devi Rai, grand daughter of Mr Sher Badadur Rai, daughter of Mr Gauri Prasad Rai and Mrs Shyam Kumari Rai permanent resident of Kamal Rural Municipality Ward No. 5, Jhapa, Koshi Province, Nepal, whose application letter dated 2080- 05 - 15 (1 September, 2023) for marital status received at this office and according to her Self declaration and witness at the ward level, has been found to be a single in Marital status till 2080-05-15 B.S (1<sup>st</sup> September , 2023). As per her Nepalese Citizenship her date of birth is May 02 1974 A.D.

6. The Judge was therefore faced with a situation in which it was being claimed the appellant had married her husband in 1989 but returned home some 10/11 months later, with no divorce until 2022, and a document from an official source in which it was claimed that she was not married.
7. The Judge clearly gave the required degree of anxious scrutiny to this evidence. The Judge accepts that a divorce registration certificate gave a date of divorce as 24 February 2022 which is in accordance with other evidence, but that the unmarried certificate stated she had never been married. The finding of the Judge that the appellant had not given any explanation for the contradiction in the evidence is a finding within the range of those open to the Judge.
8. Although it was submitted before me the Judge should have brought this point to the attention of the sponsor at the hearing, any error of such a nature is not pleaded in the grounds, and the Judge was entitled to proceed on the basis that all the evidence that she was been asked to consider had been provided. The contradiction is clear and the Judge was entitled to assume that if there was something further to say on the appellant's side on this point, that it would have been brought to the Judge's attention. It was not.
9. Ground 2 asserts the Judge failed to give material weight to the evidence but weight was a matter for the Judge.
10. I find no merit in the claim that the Judge proceeded on the assumption the documentary evidence was the only credible evidence in immigration hearings as the Judge clearly took both the documentary and oral evidence into account. The Judge gives no indication in the determination that she only accepted that weight could be given to the documentary evidence. The point she makes, as clearly stated in the determination, is that that evidence was contradictory.
11. An issue is raised in Ground 2 in relation to the support given to the appellant. The Judge does not dispute that the sponsor's passport shows visits to Nepal. In relation to financial support the Judge records the appellant's bank statements having been provided for the period 1 April 2022 to 24 August 2023 showing credits, but that finds the source of the credits was not clear from the statements as the appellant's father's bank statements, the sponsors, had only been provided from April until June 2023.
12. There was no evidence that the sponsor had financially supported the appellant before 2022 which was accepted before me today. The Judge's conclusion that is so supports the finding the appellant was not actually separated from her husband until 2022, as was found to be the more likely scenario by the Judge, namely that the marriage continued between 1989 and 2022. That has not been shown to be a finding outside the range of those reasonably open to the Judge on the evidence.
13. Ground 3 asserts the Judge erred in not undertaking a proportionality assessment but the reason for this is because the Judge found article 8(1) was not engaged. The Judge considers whether family life had been re-established between the appellant and her parents following divorce from [18], leading to it being concluded at [20]:
  20. I cannot find that the evidence before me demonstrates more than the normal emotional ties between an adult child and their parents. There is limited evidence of contact and emotional support. There is evidence of some financial support, however this alone does not constitute family life. Taking into account my finding in respect of the appellant's marriage, she formed her own independent family life with her husband from 1989 until 2022. Since the breakdown of her marriage, the appellant's parents have provided her with some financial support and there has been some telephone contact. I do not

accept that this is real or effective or committed support so as to re-establish family life.

14. Having considered the submissions made, determination, and evidence available to the Judge, and having had regard to the guidance provided by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 462 at [2], *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201 at [26], and *Hamilton v Barrow and Others* [2024] EWCA Civ 888 at [30-31], I find the appellant has failed to establish legal error material to the decision of the Judge to dismiss the appeal.

**Notice of Decision**

16. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**25 October 2024**