



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: OA/15326/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 November 2014**

**Determination Promulgated  
On 2 December 2014**

**Before**

**DEPUTY JUDGE DRABU CBE**

**Between**

**THE ENTRY CLEARANCE OFFICER, NEW DELHI**

Appellant

And

**NEERAJ SHARMA**

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Presenting Officer  
For the Respondent: Ms Afolake Jaja of counsel.

**DECISION AND REASONS**

1. This appeal has been brought by the Entry Clearance Officer, New Delhi against the decision of Judge Miller, a Judge of the First Tier Tribunal who, following a hearing at Taylor House on 19 June 2014, allowed the appeal of those Neeraj Sharma, named as respondent in this determination. The Entry Clearance Officer had refused his application for entry clearance to settle in the United Kingdom as the dependent so of Guru Bahadur Thapa, an ex-Gurkha soldier in the United Kingdom, on the basis of their rights under human rights law. Neeraj Sharma is a national of Nepal and his date of birth is 1<sup>st</sup> July 1982. Permission to appeal to the Upper Tribunal was granted by Judge Ransley, a Judge of the First tier Tribunal on 2 September 2014.

2. At the hearing before me Mr Whitwell, representing the Entry Clearance Officer said that the only point he wished to take against the decision of Judge Miller to allow the appeal is that he had failed to make a finding on the existence of family life between the respondent and his parents, the sponsors and as a consequence of that failure he had made a material error in law.
3. In response Ms Jaja for the respondent argued that it was clear from the determination that the Judge had found that family life between the respondent and his parents was in existence. She said that in determining the appeal the Judge had considered all the material facts and had made clear and reasoned findings of fact. In so doing the Judge had been properly guided by relevant case law as was obvious from perusal of the determination. She drew attention to paragraphs 31 and 33 of the determination. She asked me to have a careful study of all the relevant case law, which had been submitted in the respondent's authorities bundle.
4. Mr Whitwell in response said that the Judge should have at least mentioned the authority of Kugathas given the age of the respondent. He accepted though that the evidence of historic wrong is "indeed exceptional".
5. In my opinion, the application for permission to appeal to the Upper Tribunal, in this case has no merit. The Judge had heard oral evidence from the parents of the respondent and had accepted its credibility. He properly referred to the legal principles set out in the decision of Ghising /BOCs: Historic Wrong; (weight) (2013) UKUT 567 (IAC) and married these with the facts established in this case. The decision of Judge Miller does not suffer from any material error of law. His decision to allow the appeal for the reasons he has given is perfectly sound and accord with legal authorities relevant to the facts.
6. I dismiss this application and see no reason to interfere with the fee award made by Judge Miller.

K Drabu CBE  
Deputy Judge of the Upper Tribunal.  
30 November 2014