



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

Appeal Number: OA/23235/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 27th November 2013**

**Determination
Promulgated
On 6th January 2014**

Before

**PRESIDENT OF THE UPPER TRIBUNAL Mr JUSTICE MCCLOSKEY
VICE PRESIDENT ARFON-JONES
UPPER TRIBUNAL JUDGE COKER**

Between

ENTRY CLEARANCE OFFICER

Appellant

And

GOMA KUMARI GURUNG

Respondent

Representation:

For the Appellant: Mr R Blundell, counsel, instructed by South West London Law Centre

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant (hereafter the ECO) appeals a decision by First-tier Tribunal judge Cope who allowed an appeal by Ms Gurung (hereafter the claimant), who is a citizen of Nepal born 30th November 1976, against a decision dated 14th November 2011 to refuse her entry clearance as a partner on

the grounds that she did not meet the financial criteria as set out in paragraph E-ECP.3.3.

2. Judge Cope determined the appeal on the papers, as requested by the respondent (hereafter the claimant). He found that the decision of the ECO was not in accordance with the Immigration Rules or the law and that the application remained before the ECO for a lawful decision; he allowed the appeal. He made no findings on whether the claimant met the financial requirements of the Rules.
3. Permission to appeal the decision was granted by Designated First-tier Tribunal Judge Murray on 12th September 2013 on the grounds that it was arguable that although the ECO accepts that there were factual errors in the decision to refuse entry clearance, the financial calculation when properly conducted on the basis of the documentation before the ECO would in any event result in the claimant being unable to meet the criteria and that “evidential flexibility” was not relevant to the case.
4. It was agreed by the parties before us that the First-tier Tribunal judge had erred in law in failing to take a decision on the basis of the documents before him which were adequate to enable a decision to be reached, despite the errors on the face of the ECO’s decision. It was agreed that the error was such that the decision be set aside to be remade. We discussed with the parties the possibility of remitting the decision to the First-tier Tribunal in the light of the total failure of the judge to reach a decision but Mr Blundell and Ms Everett, having discussed the issue between them, submitted that it was appropriate for us to reach a decision on the evidence before us, such evidence having been before the ECO at the date of decision. Accordingly we agreed to consider the documents and their submissions.
5. Mr Blundell took us carefully through the financial documents which confirmed that the claimant met the financial requirements of the Rules. Ms Everett, quite properly in the light of that documentary evidence, concurred.
6. Accordingly we allowed the appeal and directed that entry clearance be issued.

DECISION

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision

We re-make the decision in the appeal by allowing the appeal under the Immigration Rules

Consequential Directions

Forthwith on receipt of this decision the Entry Clearance Officer shall issue entry clearance provided the Entry Clearance Officer is satisfied there are no circumstances arising after the decision under appeal which make it necessary to refuse to do so

Fee Award Note: this is **not** part of the determination.

In the light of our decision to re-make the decision in the appeal by allowing it, we have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

We have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

We make a whole fee award.

Reasons:

The appeal has been allowed

Signed: *Seamus McCloskey*
President,
Upper Tribunal,
Immigration and Asylum Chamber

Dated: 20 December 2013