



IAC-FH-CK-V1

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

Appeal Number: IA/46000/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2015**

**Decision & Reasons Promulgated
On 20 October 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**SABITA KHADGI SAPKOTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Vishal, Counsel instructed by Malik & Co Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was born on 9 October 1987 in Nepal. She first entered the United Kingdom on 30 July 2010 as a dependant of a Tier 4 Migrant. She subsequently got further leave in this capacity and her most recent leave was as the partner of a Tier 1 Migrant. This was due to expire on 5 September 2014. Before it expired she applied to vary her leave to that of someone enjoying family and private life in the United Kingdom. This application was refused on 11 November 2014 on the basis that she was not able to show that there were very significant obstacles to her returning

to Nepal. She appealed on 14 November 2014 and on 7 April 2015 her solicitors served a Section 120 notice informing the Tribunal that she had married a British citizen.

2. Her appeal came before First-tier Tribunal Judge Ross and he dismissed the appeal on 30 April 2015. She appealed on 14 May 2015 and she was granted permission to appeal on 10 July 2015 by First-tier Tribunal Judge Colyer. He found that it was arguable that, unlike the points based system, in other in-country appeals evidence can be admitted as at the date of appeal. On 21 July 2015 the Respondent lodged a Rule 24 application in which she said she did not oppose the Appellant's appeal and invited the Tribunal to determine the appeal with a fresh oral continuance.

ERROR OF LAW HEARING

3. At the error of law hearing the Home Office Presenting Officer confirmed that this was still the Respondent's position.
4. Section 120 of the Nationality, Immigration and Asylum Act 2002 applied as the Appellant was subject to a decision under section 82 of that Act and the Secretary of State for the Home Department had by notice in writing required her to state any grounds on which she should be permitted to remain in the United Kingdom. I have noted that the Appellant was sent such a notice in a Notice of Immigration Decision, dated 7th November 2014. It clearly said "if, at a later date, the reasons why you think you should be allowed to stay in this country change, or new reasons arise, you must tell us as soon as possible". On 7 April 2015 the Appellant gave notice that she had married a British citizen and asserted that she was entitled to leave to remain as the partner of a British citizen who was settled here.
5. Section 85(2) of the Nationality, Immigration and Asylum Act 2002 states that "if an appellant under 82(1) makes a statement under section 120, the Tribunal shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84 against the decision appealed against. The First-tier Tribunal Judge accepted that this was the case and also reminded himself that in *AS (Afghanistan) v Secretary of State for the Home Department* [2009] EWCA Civ 1076 the Court of Appeal held that new grounds could be raised following the service of a section 120 notice even where the Respondent had not had an opportunity to consider them.
6. The First-tier Tribunal Judge then considered whether the Appellant could meet the requirements of Section E-LTRP of Appendix FM to the Immigration Rules. In paragraphs 11, 13 and 14 of his decision and reasons, he found that the Appellant met all of these requirements. However, in paragraph 12 he found that she could not meet the requirements of Appendix FM-SE, as the documents relating to her and her partner's gross income had not been submitted when she initially applied for further leave to remain.

7. However, I find that the First-tier Tribunal Judge erred in law in relation to this latter finding. In the lights of *LS (post-decision evidence; direction: appealability) Gambia* [2015] UKAIT 00085 the fact that this evidence had not been submitted at the time of her initial decision was not a bar to the First-tier Tribunal Judge taking it into account. The appeal was made in-country and did not refer to the points-based system and, therefore, no restrictions under Section 85 were applicable.
8. I read through and checked the evidence provided to the First-tier Tribunal Judge in support of the submission that the Appellant was entitled to leave under Section E-LTRP of Appendix FM and agree with the First-tier Tribunal Judge that all relevant requirements had been met. Furthermore, the Respondent did not suggest that this was not the case. Therefore, I go on to allow the appeal on the basis of the evidence which is before me and which was before the previous judge in terms of the application as the spouse of a British citizen. I find that she meets these requirements.

Notice of Decision

1. The First-tier Tribunal Judge made an error of law and his decision and reasons is set aside.
2. I remake the decision under Section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and allow the Appellant's appeal.



Signed

Date 9 October 2015

Upper Tribunal Judge Finch