



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

Appeal Number: HU/05119/2015  
HU/05120/2015

**THE IMMIGRATION ACTS**

At Field House  
On 9<sup>th</sup> February 2018

Decision & Reasons Promulgated  
On 13<sup>th</sup> February 2018

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**KAMAL SING GURUNG  
KESHAB SING GURUNG**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Rule 43 Tribunal Procedure (Upper Tribunal) Rules 2008 Notice**

1. The appellants sought entry clearance as adult dependants of their father, a former Ghurkha present and settled in the UK. Their applications were refused on 1<sup>st</sup> November 2007 and their appeal heard by First-tier Tribunal judge Sullivan who, for reasons set out in his decision promulgated on 25<sup>th</sup> January 2017, allowed their appeals.
2. Permission to appeal that decision was granted to the respondent on 9<sup>th</sup> August 2017 and their appeal came before Deputy Upper Tribunal Judge G Black 5<sup>th</sup> October 2017. For reasons set out in her decision promulgated on 10<sup>th</sup> October 2017, she found errors of law in the decision of the First-tier Tribunal judge and set aside the decision to be remade. In [8] of her decision given orally on the day of the hearing, she concluded:

“... The decision and reasons is set aside. The [appellants'] appeals are dismissed. I rely on the findings made by the FTT and the absence of findings showing something more than the normal family ties.”

3. It does not appear from the decision that Judge Black retained any findings made by the First-tier Tribunal Judge, or that she heard any oral evidence after having set aside the First-tier Tribunal decision.
4. The appellants have sought permission to appeal to the Court of Appeal on two bases: firstly, that the judge erred in law in finding an error of law in the First-tier Tribunal decision and secondly that if there were an error of law the proper course would have been to remit the appeal to the First-tier Tribunal to be reheard given the extensive fact finding that had to be made.
5. The First-tier Tribunal judge did not make clear findings as to dependency. Although the decision can, as pointed out by the appellants, be read to include findings that there is family life, Judge Black is not wrong in law in stating that the First-tier Tribunal judge's findings were contradictory; the finding that there is family life that engages Article 8 does not, without more, amount to dependency for the purposes of the proportionality assessment.
6. Nevertheless, there has been a procedural irregularity in the manner in which Judge Black then went on to deal with the appeal. She appears to have relied upon what she has categorised as contradictory findings without identifying which part of the findings are retained or why. There does not appear to have been any oral evidence called to enable findings of fact to be made on the issues that remained at large and where findings had either not been made or where they had been concluded to be contradictory.
7. Although the appellants have sought permission to appeal to the court of appeal I am satisfied that it is in the interests of justice for the decision of Judge Black to be set aside in so far as it relates to the remaking of the appeal and to remit the appeal to be reheard by a First-tier Tribunal judge, no findings preserved; there having been a procedural irregularity in the proceedings.
8. Accordingly I set aside the decision of Deputy Upper Tribunal Judge Black to dismiss the appellants' appeal and remit the appeal to the First-tier Tribunal to be heard afresh.

Date 9<sup>th</sup> February 2018



Upper Tribunal Judge Coker