Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/16410/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 February 2018	**On 28 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

MS SUNITA LIMBU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – NEW DELHI

Respondent

Representation:
For the Appellant: Mr E Wilford, Counsel
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is the adult child of Mr Chandraman Limbu, a former member of the Brigade of Gurkhas ("the sponsor"). He was discharged on 10 November 1987 after 19 years' service. His military conduct was rated exemplary. The appellant appealed against a decision of the respondent Entry Clearance Officer, dated 27 May 2016, refusing her leave to enter to join the sponsor, who is settled in the UK. The dispute in the appeal has been whether the decision amounted to a breach of article 8. The respondent decided family life did not exist as between the appellant and the sponsor but, even if it did, any interference with family life was

outweighed by the legitimate interest in maintaining effective immigration control.

2. The appeal was heard by Judge of the First-tier Tribunal Chana, sitting at Hatton Cross, on 1 August 2017. Her decision was not promulgated until 9 November 2017. The judge made a series of adverse credibility findings, including that the appellant had not genuinely divorced her husband in 2011 but had taken this step as a “ploy” or “ruse” to settle in the UK. She found the appellant was an independent woman who had previously worked for an airline as cabin crew. She did not accept she was genuinely dependent on the sponsor and therefore family life did not exist for the purposes of article 8.

3. The grounds seeking permission to appeal made a number of submissions about the judge’s reasoning but the main objection to the decision was that the judge’s decision that the divorce was a ploy was irrational given the chronology. The divorce took place on 6 February 2011 but the appellant did not make her application for entry clearance until 6 May 2016.

4. Permission to appeal was granted by the First-tier Tribunal on this point. No rule 24 response has been filed.

5. I heard submissions from the representatives on the issue of whether the judge’s decision was vitiated by material error of law.

6. Mr Bramble helpfully acknowledged that Judge Chana’s decision contained an error with regard to her assessment of the divorce. However, he suggested there were other findings which were not erroneous and which were sufficient to show there was no family life. In other words, the error was not material.

7. Mr Wilford made submissions along the lines of his written grounds, emphasising how the judge had failed to take account of the evidence of the sponsor’s exemplary service and the description of him by his commanding officer as “honest” before proceeding to find he had lied about numerous issues in the appeal.

8. Mr Bramble argued the judge’s findings with respect to the error in the evidence regarding when the appellant returned to live at her father’s home, regarding the appellant’s time living independently from her father, the peculiarity of sending money when he already had a bank account in Nepal and the inconsistency over the evidence of income from the sale or rental of a shop or house were sustainable and could be considered independently from the finding on the divorce.

9. Having listened to the submissions made, I agree with Mr Wilford that the irrational finding that the appellant had divorced her husband as a ruse to show she was not living independently infected the remainder of the judge’s reasoning. She began her findings with consideration of the

evidence of the divorce, devoting several paragraphs to it. It was plainly at the forefront of the judge's mind when she concluded that neither the appellant's nor the sponsor's evidence was credible.

10. The judge's central finding is irrational. It cannot seriously be argued that the appellant would have divorced as a ruse to show she was no longer living independently from her father and then wait more than five years to apply for entry clearance. Moreover, it was not until January 2015 that the respondent's policy was amended to remove the requirement for exceptional circumstances. It cannot rationally be maintained that the appellant must have foreseen this change in policy and prepared the ground for an application four years previous to the change.

11. Despite Mr Bramble's best efforts, I do not accept that the judge's other adverse findings can be sustained in isolation from this error. I find the judge's decision is vitiated by serious error and has to be set aside in its entirety. No findings are preserved.

12. The representatives were in agreement that the appeal should be remitted to the First-tier Tribunal for a fresh hearing before another judge. Having considered the Senior President's Practice Direction of 15 September 2012, I make an order under section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007. The appeal will be reheard in the First-tier Tribunal.

Notice of Decision

The Judge of the First-tier Tribunal made a material error of law and her decision dismissing the appeal on article 8 grounds is set aside. The appeal is remitted to the first-tier Tribunal to be reheard by another judge.

No anonymity direction is made.

Signed Date 21 February 2018

Deputy Upper Tribunal Judge Froom