



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/21128/2016**

**Appeal Numbers:**

**HU/21133/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 6<sup>th</sup> April 2018**

**On 18<sup>th</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**MISS SITA RAI (FIRST APPELLANT)  
MISS GITA KUMARI RAI (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr D Manley, Counsel

For the Respondent: Mr N Bramble, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellants appeal against the decision of First-tier Tribunal Judge Row promulgated on 30<sup>th</sup> October 2017 dismissing the Appellants' appeals against their applications for entry clearance to settle in the United Kingdom as the dependent daughters of Mr Ichha Badur Rai, a former Ghurkha soldier. Permission to appeal was granted by First-tier Tribunal Judge C A Parker. The grounds upon which permission was granted may be summarised as follows:

“... The grounds allege that the Judge failed to give reasons for finding against the appellants on credibility; refused to accept the sponsor’s explanation (his illness) for having initially made an error in his evidence concerning a document at p163 of the bundle; the Judge cast doubt upon the veracity of documents (at para 22 of the decision) without putting his concerns to the sponsor and further referred to ‘other unreliable documents’ without specifying what they were.

I have carefully considered the decision. At para 24 the Judge stated that the version of events relied upon by the appellants was ‘feasible’ but that an alternative set of facts was ‘equally feasible’. The Judge did not explain why he rejected the account of the appellants and arguably applied the wrong standard and burden of proof. The Judge arguably did not give adequate reasons for not accepting that the sponsor made a simple mistake due to his illness over the documents when giving evidence. The Judge arguably erred at para 22 as alleged in the grounds.

There is an arguable error of law in the decision. Permission to appeal is granted.”

2. I was provided with a Rule 24 reply from the Respondent which was read by all parties before the hearing commenced.

### **Error of Law**

3. At the close of submissions I indicated that I did find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
4. In terms of the first ground and the account of events which the judge has preferred, there is merit in this ground in that paragraph 24 of the judge’s decision reveals the statement that the account given of the Appellants’ circumstances by the Sponsor is “on the face of it feasible”, but that an alternative account was “equally feasible”. As Mr Manley put it, if both accounts were equally feasible and the case was so finely balanced, then one would need to be sure of the reasons why one account was preferred over the other.
5. In terms of paragraph 25 and that reasoning, it is simply said that due to the Sponsor being untruthful in at least one aspect of his account, this casts doubt on everything else and for that reason the judge was not satisfied on the sole issue of whether the Appellants were financially and emotionally dependent upon their Sponsor (and also that they could not meet the requirements of Annex K, their account not being preferred). That reasoning is dependent upon the correctness of the Sponsor’s credibility, and whilst I do find that there is an error of law revealed by this ground due to my findings below, this error would not have been sufficient in and of itself to justify the decision being set aside for a material error in law without those findings in relation to the Sponsor’s credibility.

6. Turning to Ground 2, the issue here is far more pressing in relation to the judge's credibility finding which stems from what is termed as "a key part" of the Sponsor's evidence. In short, the Sponsor's previous counsel in his examination-in-chief put page 163 of the Appellants' bundle before the Sponsor and elicited evidence that the HSBC account deposits in the name of S. Khatri Chhetri were payments for the rent *for the daughters in Nepal*. That is reflected at paragraph 16 of the decision. Paragraph 17 of the decision shows that the Sponsor was cross-examined on this point and he accepted that the HSBC deposits were in fact for payment to his own landlord of *his own rent* in the UK. This naturally followed as the UK tenancy agreement for the Sponsor's own accommodation appeared at page 162 of the Appellants' bundle on the page adjacent to the HSBC deposit slips that were identified as being payments for rent in Nepal. This tenancy agreement reflected that the landlords included a person known as "Mrs Sabitri Khatri Chhetri". Paragraph 18 of the decision reflects that the Sponsor clarified his evidence on the rental payments once more for the judge and confirmed that the payments were *not* for the daughters' rent but were for *his* rent and were made to his own landlord in the UK.
7. The judge then went on to find that, although the Sponsor was unwell, this could not have been a case of confusion and that as he had produced these receipts, his incorrect evidence that they were for payment of his daughters' rent showed that he was an unreliable witness in terms of a key part of his evidence. In my view this finding is one that could be described as perverse as if the Sponsor were truly intending to mislead the Tribunal, it would be bizarre, to say the least, for the payments for the daughters' rent to the landlord in Nepal to firstly be in pound sterling and regularly made to a person named as the landlord in the UK according to the adjacent page of the Appellants' bundle, and if this had truly been an attempt to mislead, the deposit slips would rather have appeared next to the rental agreement for the Appellants in Nepal at pages 49 to 50 of the Appellants' bundle instead of next to the UK rental agreement at page 162 of the Appellant's bundle. I note looking at the daughters' tenancy agreement that the landlord's name in Nepal is Sher Bahadur Lawati, which is an entirely different name to that seen on the HSBC deposit slips. This points on balance to those deposit slips being more likely to be deposits for the Sponsor's own rent in the UK, particularly where the contents page for the Appellants' bundle also describes pages 162 to 163 as "Sponsors rental agreement and rent receipts".
8. I also note that pages 51 to 71 of the Appellants' bundle shows money remittances from the Sponsor to Gita Rai, the Second Appellant, and to Sita Rai, the First Appellant as recipients in Nepal. I further note that the judge's findings are inconsistent with the evidence she heard which she has not appraised (before reaching her conclusion that this was damaging to the Sponsor's credibility) in that if the Sponsor stated that the money was sent by "money exchange", it could hardly be said that "HSBC deposit slips" for a UK bank could pass for receipts for money exchange remittances to Nepal. Thus, given that the judge's finding at paragraph 25 is that the Sponsor had been untruthful in "at least one aspect of his

account”, which is bound to cast into doubt everything else which he said, viewing the evidence in the round, the finding that the Sponsor was being untruthful in this respect is a perverse one. Thus, I do find there is a material error in terms of Grounds 1 and 2.

9. Having found a material error of law in respect of Grounds 1 and 2 combined, I do not propose to go on to consider the remaining grounds as those errors are sufficient to render the decision unsafe. I therefore set aside the decision in its entirety and do not preserve any findings.

### **Decision**

10. The matter is to be remitted to be heard by a Judge of the First-tier Tribunal other than Judge Row.
11. The Appellants’ appeals to the Upper Tribunal are therefore allowed.
12. The decision of the First-tier Tribunal is hereby set aside.
13. No anonymity direction is made.

Signed

Date: 17 April 2018

Deputy Upper Tribunal Judge Saini