Upper Tribunal
(Immigration and Asylum Chamber) **HU/12442/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 **Decision & Reasons Promulgated**
On 16 February 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ASHIM RAI

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DETERMINATION AND REASONS (P)

1. This determination is to be read with:

   (i) The respondent's decision, dated 6 June 2019.

   (ii) The appellant's grounds of appeal to the First-tier Tribunal.

   (iii) The decision of FtT Judge O'Keefe, promulgated on 21 October 2020.

   (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 19 November 2020.

   (v) The grant of permission by FtT Judge Ford, dated 9 December 2020.

   (vi) Directions of the UT, dated 16 and issued on 17 December 2020, with a view to deciding without a hearing (a) whether the FtT erred in law and (b) if so, whether its decision should be set aside; and giving parties the opportunity to submit on whether there should be an oral hearing.

(vii) The respondent's response under rule 24, dated 18 December 2020.

2. There is no response on file from the appellant.

3. Neither party has sought an oral hearing.

4. Taking account of the issues in the case, of all materials provided by the parties, and of the judgement in *JCWI v UT* [2020] EWHC 3103 (Admin), the UT may now proceed in terms of rules 2 and 34 to decide issues (a) and (b) above without a hearing.

5. Ground 1 is that the FtT erred in its approach to the evidence by not putting matters to the sponsor, and by not giving the appellant the opportunity to respond to its concerns.

6. This is a complaint of unfairness, without any substance. Judges do not have to put every point of their analysis to parties for comment (which might become an indefinite process), provided that parties have the chance to put their case and are not taken unfairly by surprise. The appellant disagrees with what the FtT made of the evidence, but he does not show any prejudice of that nature.

7. The appellant also fails to show that even if given the chance to take his case further, he had anything else to offer. The case on which he relies, *HA & TD v SSHD* [2010] CSIH 28, states at [15] that a procedural impropriety will not vitiate a decision if it is apparent that no prejudice was suffered.

8. Ground 2 is headed "errors as to the application of the historical [in]justice", but in substance it is a complaint that the judge should have found family life, within article 8 protection, to exist between the appellant and the sponsor in 2006 (when the sponsor left Nepal, shortly after the appellant became 18) or to have revived since then.

9. Ground 2, so far as it goes to the existence of family life, at any date, is only disagreement with conclusions which were open to the FtT, which were firmly grounded in the evidence, and which are not shown to err on any point of law.

10. It is not clear what further error, if any, ground 2 aims at in terms of principles of "historical injustice"; but as family life was not established, that was the end of the matter.

11. Ground 1 shows no unfairness, and ground 2 shows no error on a point of law, so the decision of the FtT shall stand.

12. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman

25 January 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.