Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09807/2017**

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 14 September 2020	**On 26 May 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

P Y
(ANONYMITY IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Norman, Counsel, instructed by Sterling Law Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Interpreter: Ms Dhankumari R Gurung attended to interpret the Nepalese and English languages.

DECISION AND REASONS

1. I reinforce the anonymity order made when I found an error of law in this case. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker.

2. The case first came before me with the case of the appellant's husband. The appellant is a citizen of Nepal and her husband a citizen of India. In summary, I found no error of law in the decision of the First-tier Tribunal to dismiss the appeal of the appellant's husband against the decision refusing him international protection. He can go to India, his country of nationality. I did find the First-tier Tribunal had erred in law in dismissing the appeal of this appellant.

3. I append hereto and incorporate into this decision the "Decision and Reasons" promulgated on 27 January 2020.

4. At the start of the hearing Ms Cunha contemplated amending the refusal letter to reflect the appellant's husband's circumstances but there was really no question of the appellant being returned to India. It may be that this appellant *could* establish herself in India if that is what she chose to do. It is not something I have had to consider. She does not wish to live in India. She has claimed asylum in the United Kingdom and she is a national of Nepal outside her country of nationality seeking international protection.

5. Again in outline, for the purposes of introduction, there are two strands of evidence in this case. The first, which I outline below, is the oral evidence of the appellant and her husband and the second is the expert evidence provided by the appellant which I will consider in more detail.

6. It is for the appellant to prove her case to the low "real risk" standard.

7. The witnesses each gave oral evidence remotely. In order to prevent the suspicion of coaching or improper influence the appellant's husband left the room when his wife, the appellant, gave evidence.

8. The appellant adopted her statement dated 6 September 2020. She did not use the interpreter.

9. I outline that statement now. She explained there that she is a Nepalese national and her husband an Indian national. The appellant entered the United Kingdom in November 2009 as a student with leave that was extended until 2014. In 2014 she applied for leave to remain identifying the husband as her dependent. The appeal was based on their private and family lives. The appellant's husband applied for leave to remain in April 2015 as a Tier 2 Migrant and the application was refused in July 2015. The appellant's application was refused at about the same time. She was advised by someone identified rather vaguely as "the agent who helped her husband" that they could apply for indefinite leave to remain and that is what they did.

10. The appellant explained that she first met her husband in March 2012 at a friend's house party. They were attracted to each other and quickly realised that their relationship was special and they became very close. They began "dating" and in June 2012 started to cohabit. They had a religious marriage on 14 December 2012 and registered their marriage on 15 February 2013.

11. In October 2012, so that is after she had started to cohabit but before she married her husband, the appellant had a telephone call from her mother to say that the family

had found a man for her to marry. He was one of the sons of the leader of the political party that her family supported.

12. The appellant is not surprised at this. She knew there had been previous attempts to arrange a marriage between her and the sons of other political leaders.

13. The appellant was not frank with her mother. She told her that she was not ready for marriage. She did not feel able to tell her mother at that stage that she was already involved in a serious relationship.

14. Her mother continued to make telephone calls urging the appellant to return and marry. Eventually she told her that she had established a relationship with a man in the United Kingdom and she was going to marry him.

15. The appellant described her mother as "angry and disappointed" and her father had threatened to ensure that her husband would be killed if he saw him and warned them that they would not "get away" with marrying each other.

16. She said that she knew her father and uncle were capable of torture because when she was a young child a cousin had run away with a man of a different caste. Her uncle managed to bring back into the family his daughter, the appellant's cousin, and, according to the appellant, the man she ran away with was never seen again. She did not know what had happened to him but she had seen her cousin beaten and tortured in front of family members.

17. Soon after that the cousin was "married off" to a much older man and had children with him.

18. The appellant described her family as "very strict" and that it would be shaming for the family not to fall in line with the plans for an arranged marriage and it would also diminish the status of the family and she would be punished.

19. That the appellant's chosen husband was an Indian, rather than Nepalese, national aggravated the hurt significantly. They wanted her to marry a Nepalese man of the same caste and background.

20. The appellant said her father had filed a complaint about her husband with the police authorities in Nepal. She had learned about that from a distant cousin in the police. She said her family members all knew that she had run away with an Indian man and that her father and uncle "are planning to catch me". She said she had obtained a copy of the complaint through a distant cousin and she had paid 10,000 Nepalese rupees, which she estimated to be about £68, to get a photocopy of the complaint.

21. The appellant said that during her asylum interview, when she was detained, she was particularly asked why she had chosen to marry someone knowing that it would cause strong opposition in the family. The appellant said that she came to the United Kingdom intending to study, not to marry, but she fell in love with someone and did not want to think about life without him. She thought being away from their families would allow them to establish a peaceful private life but it did not happen.

22. The appellant said that feared that in the event of her removal from the United Kingdom she would be separated from her husband and left without support,

particularly if he was removed to India and she was removed to Nepal. She said that she and her husband follow the same religion but they are from different castes and countries and their marriage would be disapproved to the point that was a serious risk that they would be killed if they went to Nepal.

23. The appellant described her family as "very influential in Nepal" and her uncle as a powerful politician. She identified the position he had in the Congress Party and political work he had carried out (see paragraph 7 of statement).

24. She said that she had provided photographs that she had obtained from her uncle's Facebook page. They feature at pages 69 to 77 in the bundle. I have looked at them. I do not regard them as particularly compelling but they certainly show someone identified as the appellant's uncle in what appears to be public occasions in which he is carrying out the work of a prominent politician. The photographs may well show him addressing a meeting and presenting prizes or an award.

25. The appellant then took issue with points taken in the refusal letter.

26. There she was criticised for not claiming asylum in 2012. She accepted that she had not claimed asylum in 2012 when her relationship with her husband began and she realised that it would be problematic if the married. She repeated that she had leave to be in the United Kingdom at that point and did not think of claiming asylum.

27. She said the Secretary of State misunderstood her evidence about being in contact with her mother. She had had frequent contact with her mother but that had stopped when her mother realised that she had formed a relationship with a man and that she intended to stand by him.

28. She acknowledged the criticism that she had not provided evidence about her uncle and father being influential figures in Nepal. She said she was not on good terms with her family and could not ask them to help. She had tried to obtain what she could "online" and made that available to the Secretary of State.

29. She said that during her asylum interview the interviewing officer tried to search her uncle's name using "Google" and she assumed the Secretary of State had found the same information that she had found. She had submitted photographs of her uncle's activities.

30. She also said she had found out that her father and uncle were involved in a clash using weapons, including knives, in which they were both injured and she said this showed that there was conflict including violence amongst political leaders in Nepal.

31. She believed the Secretary of State had downplayed what she regarded as an important element in her case, namely that her family members had their own political agenda, and that both her refusal to accept an arranged marriage and her decision to marry an Indian man from another caste was shaming for the family in part because it frustrated those ambitions.

32. She said that as a daughter of a high caste family with an influential father she would be regarded as property who could be used to trade for political connections. She had frustrated those intentions. She was consequentially at risk of domestic abuse and the police would have no interest whatsoever in helping her.

33. I do not regard it as particularly important to the decision I have to make in this appeal but the appellant also gave reasons why she thought her husband would be at risk in India. She believed that her family had sufficient power to find them in India and cause them harm.

34. She believed that if she were returned to Nepal she would "have the same fate as my cousin", that is to be beaten and tortured in front of the family. She believed the family would never forgive her but would subject her to constant scrutiny and members of her family would kill her husband if they could find him.

35. She also gave as a reason for not claiming asylum earlier wrong advice (not from her present representatives) that she was eligible for indefinite leave to remain.

36. She then identified the person who provided that bad advice.

37. The appellant said she became pregnant in 2017 but miscarried.

38. She then embarked on a very troubling strand in her evidence raising matters which she said she had not been able to tell her husband until a long time after they were married.

39. The appellant said she was forced into marriage in Nepal when she was 17 years old. Her first husband was about seven years older than her but she could not remember exactly. He was the "late brother" of the man her parents wanted her to marry in 2012. She did not know her first husband before marriage and did not even know she was getting married until about a month before the ceremony and after some preparations had been made. She had only just finished school and was looking forward to college life when she was told she had to marry. After marriage she went to live with her husband and his family in Nepal. Her husband was an alcoholic and treated her badly. He used to beat her. His family beat her too and she was made to work life a servant, cooking and cleaning and felt she was in prison and contemplated killing herself. Indeed she did attempt suicide after about six months of marriage. She took an overdose of sleeping pills and became unconscious. The family were told that she had food poisoning but it was a suicide attempt that was kept secret.

40. When she left hospital she stayed with her parents for about a week and was then taken back to her in-laws' family. Her in-laws did not want her if she attempted suicide again because that would damage their reputation but her father and uncle assured them that it would not happen again.

41. She planned another suicide attempt, this time wanting to hang herself. She wrote a suicide note. It is her sister-in-law who read the note and she was punished very severely. Her mother-in-law beat her before her own family arrived and when they did her father beat her too.

42. Her mother tried to persuade her to calm down and come to terms with her new life. She became pregnant and gave birth to a son when she was 19 years old.

43. When she was six months pregnant her first husband died in a road traffic accident. She moved back to her own family home. Her family did not welcome her but as she no longer had a husband she was not tied to her in-laws.

44. The family regarded her as "unlucky". She then gave reference to Hindu astrology and explained how within that way of thinking she was unlucky and being unlucky had caused problems for her first spouse.

45. In 2007, a few years after she gave birth, she started pursuing a bachelor's degree. She did attend college but studied from home caring for her son. Her family discouraged that and wanted her to remarry but she refused.

46. After a couple of years the call to remarry became stronger. She regarded her husband's younger brother as worse than her former husband. He was a violent alcoholic. She described her in-laws' family as "very powerful". Her late husband's father was in a high position in the Congress Party and her husband's paternal aunt was very influential and she produced an article about her in the bundle.

47. The appellant said that she wanted to study and came to the United Kingdom to escape her family. She had to persuade her family to allow her to study abroad by promising to return to marry her husband's younger brother but that was never her intent. Her in-laws would not allow her to bring her son with her to the United Kingdom because they suspected she would not return if she kept her son. She described a painful separation in 2009 when she left her son behind, wondering when she would see him again. He attends a boarding school in India where his paternal grandparents pay the fees. She was not able to tell her present husband about her first marriage and child until two years after she was married. She was afraid of losing him. He was shocked but forgave her for not telling him and wanted her to do the best for her child.

48. She said she had not told anyone outside the village where she grew up about her personal history. It was a private matter and she was too ashamed about things to tell the Home Office when she had a first opportunity.

49. She had difficulty obtaining evidence about her first marriage. She said there was a religious marriage but she was not aware of any marriage certificate and suspected there was not one. She did provide evidence of a child in the form of a birth certificate and passport issued in the name of the father and her name appeared on a passport because the father was dead.

50. She had tried to contact the hospital where she went after taking and making her first suicide attempt, the record keeping in Nepal is poor and not computerised generally.

51. She believed that she was safe in the United Kingdom and could not imagine life outside it. She and her husband had established a network of friends. They had no criminal convictions and wanted to contribute to society and not be a burden on it. She said that they had a son born in June 2020 and wanted to bring him up in peace and safety.

52. Pages 82 and 83 of the bundle show a printout from a "Wiki" website a woman identified by the appellant as a relative and politician as a member of the Nepali Congress Party who had been appointed a government minister.

53. The appellant was cross-examined.

54. She said that her son who was born in the United Kingdom in June 2020 was not registered with the Nepalese authorities. She did not know how to register a birth in Nepal and had no intention of registering his birth.

55. She said she did have a child in Nepal but he was looked after by her ex-husband's family. She said there was no formal arrangement such as a custody order but they were paying. She talked to her child every Saturday. He was at boarding school. She understood that he saw her family in Nepal.

56. The appellant confirmed that her father had opposed her marriage to her husband. She had told her mother that she was going to marry before the marriage and that she was marrying an Indian and she knew her parents were opposed to it.

57. Her parents had not signed any deed to permit the marriage. She said that was not necessary in the United Kingdom. It would have been in Nepal. She said she did not need authorisation from a family member to marry in the United Kingdom.

58. She was taken to her evidence about a complaint being made about her husband to the authorities in Nepal. She said that she had found out through a distant cousin.

59. She was asked what the point was in making a complaint about a man who was in the United Kingdom. She said her father wanted to lay a foundation to complain in the event of his return to Nepal. She appreciated that 2013 is some time ago but believed the complaint was still alive. She had not taken any legal advice from anyone in Nepal about its status.

60. She identified by name the first cousin who had helped her get the documentation but she did not have a witness statement from him confirming his involvement.

61. The appellant confirmed that she no longer spoke to her mother. She did speak sometimes to the person who found the documents. She said she contacted him to see if he could help. They were not in touch regularly.

62. The appellant was asked to explain how the conversation was initiated, for example did she receive a call to say there was a police report. She said that he contacted her. Her mother's aunt initiated the contact. Her great aunt used to visit her parents' home and may have seen what had happened and decided to make sure the appellant knew. The appellant made it plain that she was speculating and did not know how it had come about. She could not explain why her father had made known what he had done.

63. The appellant denied any suggestion that her uncle was engaged in promoting equality between the castes. She recognised that the expert evidence was there were many people with the same name as her alleged uncle and she had no photographs of her with her uncle.

64. The appellant was asked if she could explain why her father would risk his own reputation by killing someone that his daughter loved. The appellant said that the harm done by the appellant avoiding the arranged marriage was the greater harm.

65. The appellant confirmed that her first marriage was arranged.

66. The appellant confirmed that she came to the United Kingdom to study, rather than marry and that her parents paid for her studies. She completed a diploma and some NVQ levels, all paid for by her father. He did not pay living expenses. She worked but he paid the fees.

67. She confirmed that even though her father wanted her to marry he paid the price of the study in the United Kingdom.

68. She said that she had lied to her parents about her intentions to return. She wanted to escape from the intended marriage.

69. She agreed that she had said she would not be able to provide evidence about her first child but she now provided a birth certificate and passport. She said this had all come with the assistance of her cousin in Nepal. There was no one else in Nepal to help her. She said that her cousin did not contact her and was scared to get involved but did respond when she pleaded for help.

70. The appellant was re-examined.

71. She said that her parents had very conservative attitudes to marriage, including attitudes to reputational damaged if she did not comply. They took a different attitude to education. It did not dishonour the family name for her to be educated, it did dishonour the family name for her not to marry in accordance with their wishes.

72. The appellant's husband gave evidence. I identify him as "KS". He adopted his statement made on 6 September 2020.

73. This shows he is a national of India and married to a national of Nepal.

74. He confirmed the outline history of his relationship given by his wife.

75. He came to the United Kingdom in May 2010 as a student and his leave was extended until a date in 2016 but then curtailed to February 2015. He made an unsuccessful application for leave under Tier 2 and then was included in the human rights claim made by his wife in November 2014. They did not pursue that decision when it was refused because they had been advised incorrectly they were eligible for indefinite leave to remain.

76. He said he and his wife sought asylum when they realised they were overstayers at risk of removal. They were frightened of his wife's family, even if they tried to live in India. His wife's father had reported him to the police because he had married her. They feared being killed, arrested or tortured by members of the appellant's family who he understood were powerful and influential.

77. He explained that he believed his wife's family would track them down in India and he explained why he took that view even though India is a large country.

78. He believed that he had been reported to the police in Nepal by the appellant's father and he believed the Indian police would cooperate with the Nepalese authorities.

79. He explained the difficulties in returning to India and how angry he had made his family by marrying. He emphasised how family support was crucial to life in India or Nepal because of the way society worked. It was very difficult to obtain secure employment or accommodation without family support.

80. He confirmed he did not know about his wife's first marriage when he married her and it was a big shock when he discovered that when she married she was widow and a mother. He said it was not something that was talked about in their culture because of the stigma attached to a woman who had been married previously and had a child and a husband even though the husband had died. He was very upset not to be told but he had already made his decision to take care of her. He was not going to leave her and would like to be a father to the child.

81. He did not disclose these matters when he first claimed asylum. They were sensitive and it was painful for his wife and harmful to her to discuss them.

82. He believed the way that the appellant had been treated was common in India and Nepal. It is what happened to young women in those societies.

83. He further believed that there were reasons connected with astrology that made things very problematic.

84. He confirmed he wanted to live peacefully in the United Kingdom and was pleased that he and his wife now had a son.

85. He was cross-examined.

86. He confirmed he did not know his wife had been married previously when he married her. His wife had told him that her parents objected to their marriage.

87. He understood that her father had made a complaint to the authorities in Nepal.

88. He assumed that the complaint was against him being an Indian national trying to get into Nepal. He was afraid of the police and he knew Indians can be arrested in Nepal. He had not taken legal advice about what might happen. He believed he was safe in the United Kingdom but did not think he would be safe in India.

89. He said he did not see any photographs of the appellant with her uncle or of the appellant with her father. He had, he thought, seen photographs of her with her mother but had not submitted anything to the authorities in the United Kingdom. He speculated that he may have seen something on an old mobile phone but he did not know.

90. He had spoken briefly with his wife's first child but his wife speaks to the child every Saturday at his boarding school. They had no money to provide and he did not know who paid for the child.

91. He confirmed that he did not speak Nepalese. He and his wife spoke in English.

92. He said that he did not understand his father-in-law to have supported his religious marriage to the appellant.

93. He did not know what had to be done to marry lawfully to show that the earlier marriage had been ended by the death of the partner. He repeated that when he married the appellant he did not know she was a widow.

94. He had no plans to return to India.

95. He does not wish to give his child Indian nationality.

96. This is a case where the expert evidence has been particularly important because it sets the context in which the oral evidence must be assessed.

97. I have two reports from Dr David Seddon, one dated 11 April 2018 and the other dated 3 September 2020.

98. Dr Seddon is now retired but was professor of sociology and politics in the University of East Anglia and his qualifications include holding a doctoral degree from the London School of Economics and Political Science in social anthropology.

99. He lived in Nepal for two years in the 1970s and speaks Nepali. He said that he has travelled widely through the country and made many visits there, staying for up to several months in different places and his last visit was at the end of December 2017 into January 2018.

100. He is well informed about the Constitution and legal framework and customs and traditions of Nepal and has provided many expert reports.

101. He understood his obligations to the court.

102. He had reviewed the documents that he had seen to help him prepare his report for the Tribunal.

103. His report began, appropriately, by setting out the background to the claim. Unsurprisingly this did not add anything to the appellant's own evidence that I have summarised above and I see no point in summarising it again.

104. Dr Seddon then moved on to consider the "documentary and other evidence".

105. Dr Seddon's analysis of the documentary evidence is, I find, particularly helpful.

106. He concludes (I do not consider this controversial) that the appellant is from a caste group known as the "Yadavs" who come predominantly from the central and eastern plains of Nepal, including the Siraha district. Their caste is linked to the Chhetri group who are the second highest caste group in Nepal. Typically they are wealthy and powerful and many are politicians and businesspeople.

107. Marriage between different caste groups takes place but it is unacceptable to the vast majority of Nepalis. Dr Seddon said that the appellant's description of a conservative family concerned with matters of family honour and shame are "entirely consistent with the objective information and my own detailed knowledge of the social dynamics in Nepal's *Terai* region."

108. The documentary evidence supporting the claim included photographs of the appellant's uncle engaged in political activities. Dr Seddon said that the uncle's name is "extremely common" but somebody of that name is undoubtedly a prominent local politician in Siraha.

109. The appellant had claimed that her father and uncle were involved in violent party politics where kukhuris (the Nepali machete) were drawn and produced documentary evidence of a clash of the kind that she described. Dr Seddon found that this strand of evidence tended to confirm the appellant's account.

110. He had seen a copy of the "application" made by the appellant's father to police informing him of the marriage and requesting that the appellant and her husband be

arrested in the event of his coming to Nepal. Dr Seddon was uncertain but, given what he knew about Nepalese society, he found it "highly likely" that it was a genuine document issued after a complaint from the appellant's father.

111. He accepted that a person identified as an aunt of the appellant served as a minister under a Nepali Congress Party government.

112. He saw no reason to doubt the authenticity of a document purporting to show that the appellant's husband should be expelled from the Nair Brahmin community because of the disgrace he brought upon himself and the community by marrying the appellant.

113. He opined that the kind of conditions that the appellant would face in Kerala would make normal private life impossible.

114. Paragraph 5.2 of the conclusions it is clear and I set it out:

> "On the basis of all the evidence, taken in the round, it is my opinion that both [the appellant] and her husband would be at real risk if they were to return or be returned to Nepal, or to India, if they return to their home areas, not only of social disapproval and ostracism but also of serious harm of disapproving members of their family and local community. It would be extremely difficult, in my opinion for them to live a normal private life, under the circumstances, either in Siraha (Nepal) or locally in Kerala (India)".

115. Dr Seddon found the document indicating police involvement to be genuine and that means the appellant's husband faced risk of arrest on return.

116. Significantly, at paragraph 5.4, he doubted that the appellant's father's influence would extend outside the Siraha district.

117. Dealing with internal relocation within Nepal he again suggested that social isolation would be unduly harsh.

118. He also indicated that it would be difficult for the appellant's husband to go with the appellant in the event of the appellant returning to Nepal. Neither he nor any children could be naturalised after about fifteen years. The naturalisation of any children would not be possible until their Indian father had been naturalised.

119. Dr Seddon then considered internal relocation to another part of Nepal. The appellant had said how her family had hired thugs and she thought they would hire thugs to track her down in the event of her return. Because of the family's political involvement Dr Seddon thought it "extremely difficult" to relocate within Nepal without being caught and then harassed possibly to the point of persecution. Registration with the authorities is required and he considered "it would not be too difficult" for an influential and determined person to find them.

120. Dr Seddon produced a further report dated 3 September 2020 partly in response to my finding that there was an error of law in the decision relating to this appellant. He reinforced Professor Aguilar's opinion which I consider below.

121. Essentially the report reinforces his earlier opinion but he had seen new evidence. Dr Seddon was shown the birth certificate for the appellant's first child. He clearly found it a credible document that supported her claim at least about her first marriage and being widowed.

122. He repeated his view that it was doubtful that the appellant's father had any influence outside Siraha and also repeated his view that it will be difficult for the appellant to establish herself in a different part of Nepal.

123. If the second husband relocated with her he would be in a very difficult position. Indians generally are not liked in Nepal.

124. He also repeated his view it was reasonable and well-founded to think that the appellant's family might hire thugs to track her down and shame her and punish her for shaming them.

125. He was aware of "honour killings" (if I may be permitted a convenient but chillingly inappropriate phrase) of the kind the appellant feared here. Detailed reports about such killings are rare but it is believed that most honour killings are undetected.

126. He concluded his report by saying he did not consider it "highly likely" that the appellant would be a victim of honour killing but it was he suggested a real possibility that should not be discounted easily.

127. Dr Seddon did make clear that he accepts the appellant's husband is Indian and of the Brahmin caste which is the highest caste in society.

128. Professor Mario Aguilar has produced an expert report dated 23 April 2019. Professor Aguilar identifies himself as the director of the Centre for the Study of Religion and Politics at the University of St Andrews and has particular expertise in Hinduism.

129. He was asked to comment on the plausibility of the appellant's account in her supplementary witness statement. He found it plausible that she was forced into marriage at the age of 17 as she claimed and confirmed that marriages are unions within families and certainly the political alliances forged by a marriage would be a consideration when arrangement were made.

130. It was plausible and consistent with his understanding of social values that the appellant did not know her first husband at all when the marriage was arranged or indeed even that she was getting married until much of the arranging had been done.

131. Similarly he found it plausible the appellant was expected to cook for the family and look after her husband and that a woman who did not fall in line would be seen as dishonourable. The fact that she was pregnant indicated the completion of the marriage and she could not be separated from her husband's family. He also confirmed the astrological problem noted by the appellant would be a significant feature. Again it was plausible and consistent with his understanding of tradition that in the event of her husband's death another member of the extended family could be found to take his place.

132. At paragraph 30 he said:

> "It makes absolute sense culturally that the appellant felt enormous shame of having been married with a son who was not with her and having found a loving partner in Europe. One cannot speculate on sentiments, but it is plausible to say that no other Hindu of Nepali would have married her after finding out that she is a Magalik who was already married and

has a child. I understand that the appellant's current husband is a Brahmin thus according to tradition they could not marry because they would be contravening MDH as mentioned in paragraph 23 of this report."

133. In short he found the appellant account of treatment by her and family and by her in-laws "absolutely plausible".

134. It was similarly plausible there would be difficulties obtaining documents.

135. Of great interest is the professor's opinion on the risk of the appellant being subjected to ill-treatment in the event of return. He explained that the appellant has not returned to look after her son or to marry again. He said at paragraph 37, I found somewhat chillingly,:

"I am afraid that my opinion is that because she has been involved with an Indian Brahmin and they are married her late husband's family would try to kill her following a practice that is common in India, Pakistan, and Nepal."

136. He then went on to discuss the risk of "honour killing". He said that such killings had been part of life of the Hindu and other communities in British India for a long time. They do occur and they might be increasingly common. I think that the syntax has gone slightly adrift but the sentiment at paragraph 40 is clear. He said of the appellant that:

"She is at a very high risk of being beaten, disfigured with acid, or killed by her late husband's relatives because she has attempted on the family honour. This risk would apply to her chosen husband. This risk would also apply to her current husband being an Indian Brahmin who has had a relationship with a Nepali Magalik."

137. He found there would be a real risk of her being subjected to violence on return. She had not looked after her son and she had not returned to marry into her late husband's family.

138. He found plausible her explanation for not being able to get medical evidence confirming her attempted suicide.

139. He prepared an addendum to the report dated 2 April 2020. His attention was drawn to paragraphs 36 and 37 in my decision that there was an error of law and there I commented that Professor Aguilar's opinions were not informed by his reading the interview record. He has now read the interview record and that has not changed his mind.

140. I have considered the appellant's bundle as a whole.

141. I had noted the supporting letters in there from friends but these simply served to show that there is a genuine relationship between the appellant and her husband which has never been doubted.

142. The appellant was interviewed about her asylum claim on 5 April 2017.

143. She began by saying she feared her family in Nepal and particularly her father and her uncle. Her uncle was a politician, the local mayor.

144. The appellant talked about her arranged marriage and made clear that she wanted no part of it.

145. She had studied in the United Kingdom and then met the man she married.

146. The appellant did not mention in this interview that she had been married previously and had a child in Nepal.

147. I have read the record but I see no reason to make any further comment on it at this stage.

148. Ms Cunha made her submissions. She relied on the refusal letter which is dated 20 September 2017 and which I outline below.

149. The letter begins, appropriately, by acknowledging that it is the appellant's case that she would be unlawfully killed upon her return to Nepal. The letter asserts, without explanation, that this is a "non-Convention reason" and it was not based on her membership of a particular social group.

150. The respondent did not believe the appellant.

151. It is accepted that the appellant is a citizen of Nepal.

152. The respondent did not accept that the appellant was at risk in the event of return to Nepal.

153. An explanation for this was given. It was the appellant's case that her family were "traditional" and wanted to arrange a marriage for her but she was allowed to travel to the United Kingdom at a time when her parents were planning an arranged marriage. These two claims were considered to be inconsistent.

154. The appellant had now married an Indian national and she was asked why she would enter into such a relationship if it would cause the problems that she alleged. She claimed in her interview not to have thought about the circumstances.

155. The respondent noted that the appellant made no effort to claim asylum in 2012 even though she said then that her father had threatened to kill her and she also claimed at that time to be in contact with her mother which the respondent thought inconsistent with her claim to be killed in the event of return.

156. The respondent acknowledged her claim to come from a high profile politically active family but found no independent evidence to support that claim and did not believe it. The respondent did not understand why she named her husband if she thought it was going to be problematic and this was not explained.

157. The respondent acknowledged receipt of supporting documents but found their provenance uncertain and was not impressed by them.

158. The respondent then reminded herself of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and said the Section applied because the application for asylum was only made after the appellant had been refused an application to vary her leave to remain. The appellant was aware of the problems before making her application for leave to remain and the respondent said that it damaged her credibility by not applying for asylum.

159. The respondent then purported to deal with sufficiency of protection but looked to country conditions in India because it was reasonable to expect the appellant to return there now she is married to an Indian. I do not follow this at all. I do not

know if the appellant would be permitted to enter India. I suspect that she would but in what circumstances I do not know. The part of the decision that deals with sufficiency of protection is, I find, entirely unhelpful.

160. The decision also suggests that the appellant can avoid problems by internal relocation but again the respondent is considering internal relocation within India which is not a country of which the appellant is a national and I see no basis on which the Secretary of State could return her there unless she chose to go in which case I would not be considering an appeal.

161. Other grounds were considered, particularly Article 8 of the European Convention on Human Rights, but nothing is said that I consider to be obvious and of limited value.

162. Ms Cunha then took me to the expert's report and addendum.

163. She began by considering Professor Aguilar's report. Ms Cunha noted the serious and very high risk identified by Professor Aguilar but submitted that the conclusion was based on a factual premise that she said had not been made out.

164. She then considered Dr Seddon's report. She pointed out, correctly, that Dr Seddon was not able to find any clear link between the people identified by the appellant as her relatives who were politically active in Nepal and those people. The only common factor was a name which was expressed to be common. She pointed out too that much of Mr Seddon's report was devoted to what would happen in the event of the appellant returning with her husband but there was no evidence that he would do that.

165. The Application to District Police, complaint, she submitted, referred to somebody who was a resident of India coming to Nepal. It is not clear what or who was supposed to do anything as a result of that.

166. Ms Cunha submitted there was no evidence that effective protection would not be available or that internal relocation could not occur.

167. She was also critical of the appellant for not giving her child nationality. The child is not British and should have been registered with the authorities in India and/or Nepal although it is not clear quite how that illuminates the decision I have to make except to the extent that it suggests a cynical determination to find a way of remaining in the United Kingdom.

168. Ms Norman relied on her written submissions but also on her skeleton argument which I consider below. Ms Norman's skeleton argument is dated 12 September 2020.

169. Paragraph 4 sets out how the appellant puts her case. According to the appellant she is a refugee under the terms of the 1951 Convention and the Qualification Directive. The sole country of reference is Nepal which is the country of which she is a national. Internal relocation is not reasonable and removal would breach Article 2 and 3 of the European Convention on Human Rights and would be disproportionate under Article 8 in any event.

170. I consider first her contention that the appellant's case, if made out, comes within the scope of the Refugee Convention. Ms Norman says the appellant is a member of a particular social group, namely "a woman who is married outside her caste and nationality" and that she risks persecution as a result. She submitted that "marriage outside caste and nationality" is an identifiable characteristic existing independently of persecution and is an immutable characteristic, the marriage having taken place and caste being unchangeable.

171. I reflected on this and can really see no objection to it. If the appellant needs protection on her case then it is protection as a refugee.

172. Ms Norman makes the point that it is the respondent's case that protection and internal flight can be found in India and that is not a relevant consideration. I agree with her about that and, although it is still for the appellant to prove that she cannot relocate within Nepal or look to the state for protection, the respondent has done very little to raise a counter argument because the respondent has picked the wrong country.

173. Ms Norman then addresses the appellant's credibility. Much is said in her skeleton argument that criticises the Secretary of State's approach. She makes the point that the respondent's contention that a family that would persecute the appellant for defying Conventions about marriage and particularly marrying outside her own caste and against the wishes of her family would not be a family that educated its women is, at best based on speculation. Ms Norman pointed out that it was the appellant's case that one of her relatives, an aunt, was in a politically powerful position. There was no justification for the contention on the part of the respondent that there was an unbelievable incompatibility between the two characteristics and certainly the expert's report ends to support, rather than undermine her contention.

174. It is also right to acknowledge that the appellant claims to have had some contact with her mother but to have not had contact for some time. Ms Norman says that it does not follow from that that the appellant is not at risk from her father. She was critical of the tone of the interview and I note the comments made there but that is not something that assists me particularly.

175. The experts' reports are from respected sources. Dr Seddon believes that the birth certificate for the appellant's first child is a genuine document which supports her claim to have been married and to have had a child. The reports agree that it is plausible for her to claim to be at risk of violence from her family and that extends to the family finding her and punishing her in the event of her return.

176. The report refers to "impunity" and "corruption" among the police (see paragraph 5.12 of Dr Seddon's report of 11 April 2018) and Dr Seddon confirms that if the family have political "clout" as she claims, internal relocation would be difficult. Registration with the authorities is required and Dr Seddon believes a person of influence could obtain information that would lead to the appellant being traced.

177. The skeleton argument contended that the appellant's failure to claim asylum on an earlier opportunity has to be set against her clear evidence that she was the victim of bad advice or fraudulent advice and she has supported that with texts reassuring her

that all was in hand. I remind myself of the relevant chronology. The appellant claimed asylum on 22 March 2017. She had been served with a form RED0001 as an overstayer about ten days before on 12 March 2017. She entered the United Kingdom in November 2009 and her leave was extended until November 2014. She remained as an overstayer and on 16 February 2015 applied on "family and private life" grounds. She appealed the decision and her appeal rights were exhausted on 11 January 2016. It is the appellant's case that she took part in a religious marriage ceremony in December 2012 and their marriage was "registered" in February 2013. Certainly the correspondence appears to be between the appellant and a legal advisor and can be described as having an "optimistic tone". Ms Norman argued that the conduct did not come within the province of Section 8 at all. I cannot agree with her about that. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 prescribes that in "Determining whether to believe a statement made by or on behalf of the person who makes an asylum claim or a human right claim, a deciding authority shall take account, as damaging to the claimant's credibility, of any behaviour to which this Section applies." and Section 8(5) informs me that the Section "applies to failure by the claimants to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification."

178. The delay is discreditable because Parliament says that it is but how discreditable is a matter for me and I do not find it particularly discreditable. From the appellant's point of view she was pursuing an application that she expected to succeed. I doubt if she was familiar with the requirements of the Act and although I must treat her behaviour as discreditable I really cannot put much weight on that as a reason for disbelieving her.

179. I consider now the interview and asylum claim. In her screening interview the appellant complained about being stressed and summarised her asylum claim in the following terms: "two reasons. Married to an Indian guy - my family don't accept this - nor does his family, I am homeless, my family are high up in politics, they don't like Indians, don't understand language."

180. The interview took place on 5 April 2017 with the help of an interpreter in the Nepali language.

181. She began by saying she feared her family and only her family. Particularly she feared her father and uncle. She explained that her father and her uncle were politicians. Her problems began since they found out she was living with her husband. Cohabitation began in June 2012 and it was discovered in October 2012.

182. She explained how in October 2012 her mother telephoned her to say that the family had found a man for her to marry who she described as "one of the sons of the party leader" and she stalled and she had to tell her mother that she was living with her husband.

183. The interviewer expressed surprise that it was late to be arranging a marriage when she was aged 29. The appellant then said that the man identified as a suitable husband was not related and she claimed not to have met him. The interviewing officer found some of the answers confusing as the office said at question 23: "but

you said this was going on before you came to the UK?" and the appellant replied "yes it was to a different person before".

184. The appellant said she did not want to get married to people linked with politics. She said that the family respected her choice to be educated but was strict about marriage.

185. She was asked why she did not claim asylum in 2012 and replied "I had leave at this point".

186. At question 36 the interviewer said: "I don't believe you did, the information I have here indicates your leave was curtailed in June 2012" and the appellant replied:

> "I had leave until 2013 then the college closed down and then I started looking for another college. I looked for the college during that time and applied for leave that expired in 2014 in November. The application I made was appealed and leave was granted until 2014, I cannot remember all the dates but I remember the leave was going to expire in November 2014. Then we filed for Human Rights family life and private life."

187. She raised in interview her dissatisfaction with her former (not qualified) advisors.

188. She said that her father had threatened to kill her and her husband and in answer to question 46, "Why did he make that threat?"she replied, "because before I came I told them I would marry the person they told me and I broke that promise. My father and his friend had a promise that we would marry and it is a big deal for them."

189. At the time of being interviewed she said she had had no contact with her family for five months. Her mother telephoned because she is her mother and her mother tried to convince the appellant to return. It was suggested that contact with her mother was inconsistent with her claim to fear death but she said that if she and her husband went to India together they would be killed and if she left her husband behind "then I am not alive because I am not living my life".

190. It was suggested that the appellant had entered into the marriage so she could stay in the United Kingdom. She denied that. She said "if I wanted to stay in the UK I would have gone for a British citizen". She explained that hers was a love match. She emphasised that inter-caste marriages were not acceptable in Nepal.

191. The appellant said that because of her family's political connections the police were in their pockets. She said how her uncle was in the Nepalese Congress Party and she named her father and said how her uncle had been in politics since she was 10 or 11 years old.

192. It was put to her that the interviewing officer had identified a person with that name but the details did not match. That did not surprise her. The appellant said that the person referring to was from "the other side of the country".

193. It was then suggested that if the interviewing office could not trace the person online then that person could not be described as high profile (question 68). The appellant denied telling lies. She said that her uncle was a local mayor.

194. The appellant concluded the interview by repeating her claim that she was sure she would be killed if she went to Nepal with her husband.

195. In her oral submissions Ms Norman reminded me, correctly, that the UNHCR guidelines require me to give the benefit of the doubt to an appellant on issues of credibility but also reminded me, correctly, that the key question was not the peripheral details of the claim but the core claim, namely whether she was at risk of serious violence or worse because she had defied Convention and married outside her caste. The expert evidence supported the plausibility of that claim.

196. Ms Norman accepted at least by implication that the appellant's late disclosure of her son from a lately disclosed marriage was a questionable element in her appeal but pointed out this was an admission against interests. The appellant did not have to say these things and mentioning them at all was indicative of her telling the truth. What it did not do was show that she was not at risk because of her marriage.

197. It was submitted that on analysis I would have to conclude that the appellant was substantially truthful. She submitted there were no proper reasons for undermining the Application to the District Police. Family lineage is important and the evidence, including the expert report, is that she could be found.

198. I have had considerable difficulty in drawing together all the strings in this case. There are elements of the evidence which are unsatisfactory and there are elements of the evidence which I find compelling. I appreciate of course it is my task to decide if I am satisfied that there is a reasonable likelihood of the appellant risking persecution or other serious ill-treatment in the event of her return. Whilst I think it is apparent from the remarks made above I am not impressed by the respondent's contention that her credibility is destroyed by her late asylum claim. I must regard the late claim as a negative factor because parliament says that I must but I bear in mind that at the time of her marriage which was the incident on her events that meant she could not go back and do as the parents wished, she was lawfully in the United Kingdom and she was making subsequent attempts to regularise her position. I give significant weight to her claim that she was the victim of bad advice because there is paperwork which gives substance to that and it was a claim she made at an early stage and I do not regard her credibility as more than minimally damaged by the late claim.

199. I find her lack of candour with the interviewing officer concerning. The appellant is a woman who claims, and has produced a credible birth certificate to support it, that she is a widow and the mother of a child in Nepal who she contacts frequently. There is nothing at all unbelievable about this part of the claim, and neither is there anything from a western perspective that is in the least bit shameful although leaving the child in the care of another might perhaps raise a few question marks about her commitment as a mother. It is an extraordinary thing not to mention during the course of an interview and an astonishing thing not to mention to her husband in waiting and to keep secret until after the marriage, yet this is what she says happened. I do not understand it. I do not understand why, if this is the truth, she should be reticent about it or why if it is not the truth she should claim that it is. It is an element of her case which seems to do it no assistance whether true or untrue but her failure to be frank does set up a concern that she is an unreliable historian.

200. I remind myself of Dr Seddon's second report at paragraph 7.3 where he said:

"It is my opinion, given my knowledge of Nepali society and the values and beliefs held by high caste Hindus in particular, that her explanation for this – namely that she was deeply embarrassed and ashamed, and also frightened of the implications for her relationship with her current husband were he to know about her previous marriage, pregnancy and child – is plausible."

201. I must give weight to that. Dr Seddon's evidence is there to do to assist me in understanding a different culture from his perspective of informed academic analysis over many years. I have not been given any reason to discount that evidence and the fact it does not fit in with my expectations based on my experience of life is not very important. Professor Aguilar makes the same comment and I make the same observation. Decisions are made by judges, not by experts but expert opinions are entitled to respect and there was nothing before me that undermines either their general reputation or their opinion on this particular point. It follows therefore that I must overcome my own feelings and bear in mind the inherent plausibility of her great reluctance to be frank about her earlier life experiences.

202. This comment also applies to the otherwise curious feature that she failed to mention not only a previous marriage but that she had previously been married to the brother of the person it was now intended that she should marry. It is not in any way to her advantage to make up this relationship and to rely on it or as far as I can see to omit it which risks creating a suspicion of dishonesty. For similar reasons I must discount any unease I have about her lack of candour about the chosen husband.

203. That she was expected to marry her late husband's brother is, I find, consistent with my expectations and much more importantly consistent with the expert's report. That she found the first marriage very unhappy is easy to believe. She is a young woman with the ability to benefit from education, and who wanted to be in the United Kingdom. She had no interest in being the family skivvy which I find is what was expected of her.

204. Contrary to what she said she did know something about her husband's brother and did not like what she had seen. It makes sense to me that she would be appalled at the idea of being expected to marry him. Not only was an arranged marriage against her inclinations (although no doubt wholly consistent with her upbringing) it was an arranged marriage to someone she found repugnant and I find that part of her story credible.

205. I cannot agree with the Secretary of State that allowing the appellant to travel to the United Kingdom to study is somehow inconsistent with the family values requiring obedience to marital plans. I see no reason why the family's expectations should be liberal in both regards. I found Ms Norman's observations that the politically active and therefore independent aunt was clearly part of the family helpful. The family are "liberal" in some ways. It does not follow that they are liberal in all ways.

206. The independent evidence from the internet that the appellant's family is politically active, rather than simply being evidence of political activity by people with appropriate names is not compelling but it does not have to be. Professor Seddon indicated that political activity is associated with the appellant's caste and she is not suggesting that her father or uncle were especially high profile at a national level. It

would have been better if she could have provided some photographic evidence that linked the photographs said to be of her uncle and father to her but she did not and that is a deficiency in the case. I find the story inherently plausible and I decided to believe her claim on that point. I appreciate that the Secretary of State does not. I am not allowed the luxury of indecision on this point and I have decided to resolve it in the appellant's favour.

207. Once that is established, then, by marrying anyone without her parents' permission, the appellant has shamed her family. Just how hostile they would be to such an arrangement is not easy to evaluate. Again from my perspective, the idea of a man's daughter behaving in a way that so offended his family values and shamed him in front of others and outraged him that he would want to do her really serious harm or even kill her is unfathomable but the risk is not from me. I remind myself of paragraph 4.2 of Professor Seddon's report, noted above (paragraph 106) that the appellant's family is conservative and concerned about matters of family honour and shame is entirely consistent with his knowledge of the area.

208. There is a footnote to the report suggesting that Professor Seddon has particular knowledge of the mores of that area.

209. I remind myself of Professor Aguilar's comments at paragraph 37 where he says:

> "Indeed, there is a real risk that the first appellant is being subjected to violence on return, particularly as she has not returned to look after her son, and to marry again. This time though, I'm afraid that my opinion is that because she has been involved with an Indian Brahmin and they had married her late husband's family will try to kill her following a practice that is common in India, Pakistan and Nepal."

210. I remind myself too that though I have resolved my doubts on the appellant's integrity in her favour the point here, that she is at risk because she has married someone of a different caste, is not dependent on those findings but on the undisputed fact of the marriage and the castes of the appellant and her husband.

211. I have read the background material relating to so called honour killing and it introduces me to the I find less objectionable phrase "customary killing" but other than assuring me that such things do happen I did not find them particularly helpful. The material did not help me assess the degree of risk that this appellant faces.

212. Overall I am satisfied that the appellant has married outside her caste and contrary to tradition and in so doing has thwarted the plans of her family to marry her to a man who was the brother of her first husband and which marriage would be socially advantageous for her immediate family. I am also satisfied that by putting herself in a position where she cannot marry him she has shamed her family and that, it is reasonably likely, will provoke a degree of outrage far greater than would be assumed by a person living in the west with European values. Death is a real risk or a less drastic but exceedingly serious alternative punishment as suggested by Professor Aguilar such as attacking her with acid is a real risk if she goes where her family can find her.

213. The appellant would not have to go where her family could find her but I note Professor Seddon's observations over his two reports that whilst the family probably

do not have the power to have influence throughout Nepal, they do have the means to find her. This is speculation on Professor Seddon's part but there is a centralised record keeping system and Nepal is a society where there is much corruption and the family have wealth and influence.

214. Further it would be extremely difficult for the appellant to establish herself in Nepal. I do not know how she would manage on her own without family support which she clearly would not want and her husband as a foreigner from the wrong caste would be a liability, rather than an asset. It is plain that some Nepali women do marry Hindu men because there is evidence in the papers about how difficult the men find it to attain a naturalised status in Nepal but this appellant would be returning without support and with powerful enemies powerful enough to flush her out. It would, I am satisfied, be unreasonable to expect her to avoid persecution by enduring such hardship.

215. This case is not without its difficulties but I find, applying the low standard of proof that I am required to apply, the appellant has made out her case. She would be at risk in Nepal of severe ill-treatment because she is what she is and it would be persecution for a Convention reason. I find that she is a refugee and I allow her appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 May 2021

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA 09807 2017
PA 12258 2018

THE IMMIGRATION ACTS

Heard at Field House
On 15 November 2019

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

P Y First Appellant
K S Second Appellant
(ANONYMITY DIRECTION IN FORCE)
and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellants: Ms J Norman, Counsel, instructed by Sterling & Law Associates LLP
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellants or either of them. Breach of this order can be punished as a contempt of court. I make this order because the Appellants are asylum seekers and are entitled to anonymity.

2. There are two appellants here. The first Appellant, PY, is a citizen of Nepal. She was born in December 1982. The second Appellant, KS, is a citizen of India. He was born in May 1985. The parties married in a civil ceremony on 15 February 2013 and this gave legal effect to a religious ceremony that had taken place on 14 December 2012.

3. They appeal against the Decision and Reasons of the First-tier Tribunal promulgated on 3 June 2019 dismissing their appeal against the decision of the Secretary of State made, in each case, on 20 September 2017 refusing their application for asylum and/or humanitarian protection. They appealed the decision on the grounds that they were refugees and entitled to international protection and also that removing them would contravene their rights under the European Convention on Human Rights, particularly Article 8. In each case the appeals were dismissed on all grounds. Although the Appellants appeal a joint decision of the Secretary of State which, appropriately, led to joint hearings in the First-tier Tribunal and now the Upper Tribunal their cases are separate and have to be considered separately.

4. The thrust of the appeals was particularly well summarised by the First-tier Tribunal Judge where she said at paragraph 3:

> "Both appellants claim asylum on the basis that their respective families have rejected their marriage and that they will be at risk on return to their home countries. The first appellant claimed that she had been threatened by her family because she married an Indian national. She claimed that her family are powerful and wanted her to marry someone else. She stated that they are politically influential and will be able to find her even if she moves to India with her husband. The second appellant claimed that his family disapprove of his marriage to the first appellant because he is Brahmin and that he will be at risk because he married outside his caste. He also fears that he will be killed by the appellant's family who have influence in India because of their political connections."

5. I begin with the case of the second Appellant because this, in my judgment, is by far the most straightforward.

6. The First-tier Tribunal Judge noted that the second Appellant entered the United Kingdom with permission as a student in May 2010. His leave was extended in different capacities until 18 April 2016.

7. On 25 November 2014 he applied for leave to remain on "private and family life" grounds as a dependant of his wife, the first Appellant. That application was refused on 16 February 2015 and an appeal dismissed on 17 December 2015. On 7 April 2015, that is before the outstanding appeal was dismissed, he applied for leave to remain as a general migrant and the application was refused in July 2015.

8. On 12 March 2017 he was served with a form identifying him as an overstayer and liable to detention. Shortly afterwards on 16 March 2017 he was served with removal directions for India. He claimed asylum on 27 March 2017.

9. The Judge summarised the Secretary of State's reasons for refusal and the substance of the appeal before her. It appeared to be the Appellants' case that the decisions leading to their removal would interfere with their private and family lives disproportionately because they would be removed to different countries. The Judge was not satisfied that she had been told the truth. She gave reasons for her findings, which are criticised in the grounds, and dismissed both appeals.

10. The Judge also had regard for expert evidence and again is criticised for the way she considered it.

11. The Judge's findings on the "Article 8" claim are clear and are found mainly at paragraph 50 of the Decision and Reasons. I set them out below:

> "Ms Norman submitted that any interference with their Article 8 rights will be disproportionate and that they would be living either in Nepal or in India without family support. I find that the appellants would be able to live in Nepal where they could seek employment and carve out an independent life for themselves. Alternatively they could live in India; the first appellant would be able to obtain a spouse visa to live with her Indian husband in India. Both appellants are well educated. The second appellant gave evidence that he has a Masters Degree in marketing, innovation and engineering. I find that they can utilise their qualifications and experience and settle in India. If they do not want to live in Kerala they could live in another part of India".

12. At paragraph 52 the Judge said:

> "I find that both appellants were well aware that if they feared returning to their countries of origin, they needed to claim asylum. I take into account their level of education. I find that their credibility is damaged under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because they did not claim asylum until they were faced with removal. The first appellant claimed asylum on 22 March 2017 when her application for leave to remain was refused on 16 February 2016. The second appellant claimed asylum only when he was served with removal directions on 16 March 2017. His claim for asylum is dated 27 March 2017. In conclusion, I find that any interference with the appellants' Article 8 rights, will be proportionate. I do not find that the interference will result in unjustifiably harsh consequences."

13. There are six grounds of appeal drawn by Ms Norman. As far as I can ascertain only ground 4 relates to the second Appellant. This ground criticises the Judge for finding that the credibility of the "Appellants'" (*plural*) was damaged because they did not claim asylum until they were faced with removal. The ground asserts that the details of the claim were first set out in a human rights application in November 2014 and so the substance of the claim was known to the Secretary of State before any immigration decision was made.

14. The grounds then draw attention to the terms of Section 8(5) of the 2004 Act:

> "This Section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification."

15. The ground asserts that the claim could be framed either as an asylum or as a human rights claim and as the human rights claim was raised before the immigration decision was made Section 8 has no effect.

16. Ground 6 mentions the second Appellant but only in the context of criticising the Judge for not making a finding on the claim that he would be arrested and mistreated by the police in the event of his arrival in Nepal. That is not material. There is no question of the second Appellant being removed to Nepal but to India. The Judge found that the second Appellant could live safely in India and the first Appellant could live there with him without difficulty if that is what she wished to do.

17. The grounds do not criticise the First-tier Tribunal's finding that the second Appellant had nothing to fear in India. The evidence to support a conclusion that he would face substantial difficulties in India, with or without the first Appellant, was scant. India is a large and diverse country. There was nothing to give weight to the expressed fear that the first Appellant's family would be able to create trouble for the second Appellant in India if that is what they chose to do or that they could not find somewhere to live together without risking persecution or other really serious ill treatment.

18. I appreciate that the grounds do criticise the general adverse credibility finding but that criticism is, I find, misconceived. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 sets out circumstances in which Parliament says conduct is discreditable. It is a difficult section. Discreditable conduct is discreditable without the authority of Parliament and conduct which appears to be discreditable is not necessarily discreditable or a reason to dismiss a protection claim merely because an Act of Parliament identifies such conduct as discreditable. This is not to disrespect Parliament. The matters set out in Section 8 are convenient hooks on which to hang adverse credibility points and because they are recognised by Parliament there is rarely any need to give any expansion or consideration or explanation to justify an adverse credibility finding but the point is not that an Act Parliament *makes* something discreditable but that something *is* discreditable and Section 8 makes it easy to identify and explain. The Judge's point at paragraph 52 was that the Appellants (this applies to both of them) are well educated people who did not claim asylum until faced with removal. In the case of the second Appellant the asylum claim followed the service of removal directions on 16 March 2017 and deferred until 23 March 2017 and the asylum claim followed on 27 March 2017. The Judge's clear point is that the Appellants could have claimed asylum earlier if they were in need of protection and the delay is discreditable. The Judge was entitled to give weight to that point without any reference to Section 8.

19. Counsel's grounds argue that the Section has been misapplied. Ms Norman argued that it applies where there has been a failure "to make an asylum claim or human rights claim" and the human rights claim had been made. In the case of the second Appellant the timing of the asylum claim is something that the Judge was entitled to consider and, given the general weakness of the second Appellant's claim, the Judge was entitled to give considerable weight to the claim being made when it was and not on an earlier occasion.

20. Further I do not accept Counsel's contention that Section 8(5) does not apply. It applies where a person makes an asylum claim *or* a human rights claim. Even if a human rights claim had been made the asylum claim had not and it could have been because it was not based on fresh facts. The Act applied and the Judge was entitled to use it as a convenient shorthand for explaining her finding that the second Appellant was not believable.

21. There is no error of law in the decision in the case of the second Appellant.

22. It does not follow that the decision in the case of the first Appellant is sound and I turn to that now.

23. I consider now the grounds as far as they relate to the first Appellant.

24. Ground 1 complains that the Judge has made findings without giving proper reasons. Criticism is targeted at paragraphs 27 to 29 of the Decision and Reasons. It is a feature of the first Appellant's case that she has been married, or at least in a relationship regarded as marriage (it does not seem to be officially recognised in Nepal) before she started her relationship with the second Appellant. That relationship was unhappy and her former partner since did. There is a child of that relationship who has now achieved, or is close to, his majority.

25. The First-tier Tribunal Judge found it significant that the first Appellant never mentioned in her screening interview or her substantive asylum interview that she had been married previously and had a son from that marriage.

26. Screening interviews must always be reviewed with considerable care because their function is to identify the gist case so that it can be categorised, rather than to distil all the information on which an applicant seeks to rely. However the record shows that the first Appellant was asked directly at question 1.19 to confirm details of any spouse or partner or children "not included on asylum application". That may have prompted the first Appellant to say that she had had a partner who had now died and had a child who lived in Nepal but she did not.

27. I have also considered the Asylum Interview Record. Perhaps surprisingly the standard rubric does not ask someone if they have been married more than once or about their children. At question 27 the first Appellant was asked: "Why weren't you married off before you came to the UK?". She replied: "I was not interested in getting married to people linked with politics at all. I told them I am not interested in marriage and I want to study first, get qualified and then think about it."

28. I note too that earlier questions deal with the interviewing officer's professed surprise that the first Appellant had not been married in Nepal but her answers did not indicate that she had been married.

29. The first Appellant was asked at question 35 why she did not claim asylum in 2012. Her answer was that she had leave at that point. The interviewing officer thought that that was wrong but the first Appellant persisted that she had leave and it expired in November 2014 and she made an in-time application (she thought) on private and family life grounds. She indicated that the human rights application was based on the husband and her not being accepted in Nepal.

30. She then explained that she later told her parents that she had a partner in the United Kingdom and how that news caused consternation. She said that her father threatened her because he had been shamed because a match he had planned for her could not happen.

31. The first Appellant then explained how she had an uncle who was in a prominent position in politics. The interviewing officer said that he had not been able to find that relative at all on an "internet search" and asked her to comment on the suggestion that the uncle was not sufficiently important to worry about if he could not be found on the world wide web. The first Appellant replied "five days isn't enough" meaning it was not enough to provide further information. The first

Appellant then referred to evidence she wanted to get in the form of the police report that her uncle and father had submitted. She insisted that she and her husband would be killed in Nepal. Marriage in different castes was a shocking thing.

32. The Judge was clearly entitled to find that these questions would have prompted a forthright person to have mentioned the earlier marriage. Taken at face value the questioning and tone of the interview did encourage the first Appellant to say that she had had an earlier relationship and a child and the failure to do that, without more, clearly supports an adverse credibility finding. The grounds contend that the adverse finding is unlawful because there was expert evidence that a previous relationship and a child of the relationship would be a matter of shame for the first Appellant and the Judge did not deal with the evidence that the first Appellant would find it very difficult to admit to what she later said had happened.

33. The Judge clearly understood the first Appellant's claim that it was shameful to mention the earlier relationship in Nepal. The Judge records at paragraph 15 that the first Appellant "said it is culturally taboo to say that she was previously married and has a child from another husband. She said that she never mentioned that to anyone." Thus it is beyond argument that the Judge understood the first Appellant's point.

34. The Judge also noted at paragraph 37 of her Decision and Reasons Professor Aguilar's report where he said at paragraph 30:

> "It makes absolute sense culturally that the appellant feels enormous shame of having been married with a son who was not with her and having found a loving partner in Europe. One cannot speculate on sentiments but it is plausible to say that no other Hindu or Nepali would have married her after finding out that she is a Magalik who was already married and has a child."

35. At paragraph 38 the Judge suggests that the reason the first Appellant did not mention at an early opportunity her earlier family is that it would be understood that it disadvantaged her as a marriage partner to be widowed with a child. The Judge suggested that far from being angry the first Appellant's parents would be pleased that she had found a partner and thereby relieving them from the difficult task of finding one suitable for her. The Judge also suggested that the family were not strict in Nepalian traditional values. If they were they would not have allowed the first Appellant to have left her child in the care of the former husband's family while she went to study in the United Kingdom.

36. Professor Aguilar listed the matters that he was expected to consider as part of his instructions. He refers to the first Appellant's witness statement and her husband's witness statement and their respective supplementary statements. He does not refer to the interview record. His observations about the first Appellant's reluctance to disclose her former marital status is not informed by the interview record and the context which might be thought to have prompted a truthful person to have overcome embarrassment and cultural taboos for the sake of her personal safety and to have explained that she had been married previously.

37. There is theoretical merit in the ground complaining that the Judge did not give a proper reason for discounting the explanation suggested by Professor Aguilar and

that criticism has to be set against the background and the facts. There was a full asylum interview where it is quite clear to me a person who was telling the truth (which is more than just not telling lies) would be expected to have stated that she had indeed been married before and had a child. Professor Aguilar's comments are not informed by the interview record. The criticism has no practical merit. It is quite apparent that the Judge considered the evidence as a whole and can be excused for not giving a better explanation because it is obvious that Professor Aguilar was not informed properly when he expressed the opinion that he did.

38. Ground 2 complains that the Judge had given weight to immaterial considerations. At paragraph 29 the Judge does indeed say of the first Appellant that:

> "I find that she attempted to hide the fact that she had been previously married with a son and as a widow was free to marry the second appellant."

39. However, as the grounds correctly state, it had never been the first Appellant's case that she was not free to marry. It was her case that her chosen partner would be wholly unacceptable to her family.

40. I can make no sense of the finding that the first Appellant hid the fact that she was free to marry the second Appellant but nothing turns on this finding. What the Judge found significant is that she had attempted to hide the fact that she had previously been married with a son. The Judge went on to say that the first Appellant had said that she feared her own family and her deceased husband's family and found it significant that she had never mentioned a fear of her deceased husband's family in the asylum interview. The Judge was entitled to find that a woman genuinely frightened for her life would have mentioned these things.

41. Nevertheless the grounds are right when they say that the issue of the previous marriage does not affect the core claim, namely that the first Appellant fears her parents' action if she is returned to Nepal and she is not free to marry the person that her father has chosen for her but with a husband from a different country and a different caste.

42. The grounds say that the difference between a "district secretary" and a "Home Secretary" for the Congress Party is trivial and does not go to the core of the claim. It certainly does not go to the core of the claim but it is for the Judge to decide if it is trivial. The Judge was entitled to give weight to an inconsistency in the description of an officer when it was the first Appellant's case that her uncle was politically active in an important way.

43. The third ground deals with the expert evidence. I have looked particularly carefully at Mr David Seddon's concern that the first Appellant's family might instruct thugs and would be expected to do that to intimidate or even kill her. The Judge is wrong to say that the expert took the claim at face value. Mr Seddon was careful to refer to background material showing that criminal gangs operate in eastern Nepal, including the Sirha District where the first Appellant originates and the plausibility of the claim was not a result of accepting at face value her assertions but reading them against the background material. The grounds contend correctly that the first Appellant's evidence is that her family supported her before she met and married the second Appellant and that was something that she expected to be so disturbing she

was very reluctant to tell her family about it. The fact the first Appellant had previously had support from her family does not mean that they would continue to support her now that she is married.

44. I have already considered ground 4.

45. Ground 5 criticises the Judge for failing to resolve conflicts on material matters and failure to take account of the expert report. I see merit in this claim. As the grounds point out, it was consistently the first Appellant's case that she had been badly treated by her first husband who was an alcoholic. I do not understand why the Judge was able to conclude that there would be no threat from that family in the future except that analysis seemed to fit with her view that she had formed of the Appellant's family circumstances in Nepal. The Judge has not dealt with the expert evidence about this.

46. Ground 6 complains there is a failure to make a relevant finding. The point is that the Judge accepted (I think) that the first Appellant's father had served a notice with the police which could have the effect of creating difficulties for the first Appellant and/or the second Appellant in the event of their entry to Nepal. The Judge decided that this was done cynically to bolster the claim. I do not understand why the Judge preferred that explanation to the one advanced by the first Appellant, namely that it was done because of the parents wish to do her harm.

47. The Judge has not dealt adequately with the expert evidence that adds weight to the credibility of the claim.

48. I am far from saying that the first Appellant is entitled to international protection but I am satisfied that the Judge's decision does not deal adequately with the evidence before her and I set aside her decision insofar as it relates to the first Appellant.

49. Further I find no findings can be preserved as everything should be considered in the light of a proper examination of the expert evidence.

50. Findings regarding the second Appellant are sound and I dismiss the appeal against the decision to dismiss the appeal of the second.

51. I allow the appeal in the case of the first Appellant and I have decided that it is appropriate for this to be dealt with in the Upper Tribunal probably before me. I give no further directions concerning the admission of evidence. If either party wishes to adduce evidence not already before the Tribunal then they must do that promptly because they may find that the case is listed quite soon. In any event an application in accordance with the Rules will have to be made.

Notice of Decision

52. In the case of the first Appellant, the First-tier Tribunal erred in law. I allow the appeal to the extent that I set aside the decision and direct that the appeal be heard again in the Upper Tribunal.

53. In the case of the second Appellant, I dismiss the appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 21 January 2020