**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/16058/2019

**THE IMMIGRATION ACTS**

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| **Heard in George House, Edinburgh** | **Decision & Reasons Promulgated** |
| **On 27 April 2022** | **On 09 June 2022** |
| **Extempore** | |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MR SIDHDI KUMAR SHRESTHA**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Fyffe, McGlashan MacKay Solicitors
For the Respondent: Mr J Mullen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge P A Grant-Hutchison promulgated on 29 January 2020 dismissing his appeal against a decision of the Secretary of State made on 13 September 2019 to refuse him leave to remain.

2. The appellant is a citizen of Nepal and is married also to a Nepalese citizen. At the time of the appeal she was heavily pregnant with their

child. In essence, the appellant's case is that he meets the requirements of the Immigration Rules, paragraph 276ADE subparagraph(vi) on the basis that there would be very significant obstacles to his integration into Nepal if required to leave the United Kingdom. That primarily is based on the consequences of the earthquake in 2015, which has had a major impact on his family, would make it difficult for him to get any accommodation at all and he says he would be unable to find employment such that he would be able to provide for him and his family. He said that he had no resources and his wife said the same.

3. The Secretary of State's case is that the appellant had not shown that there were very significant obstacles to his re-integration into Nepalese society and that, contrary to the appellant's submissions, his removal to Nepal would not otherwise be a breach of the United Kingdom's obligations pursuant to Article 8 of the Human Rights Convention.

4. The judge heard evidence from the appellant and his wife as well as Mr Madan Lal Shrestha. The judge also had before him five inventories of productions including a number of witness statements. The judge noted in the submissions made, noting at paragraph 11(g) that the submission had been made and evidence produced to show that there would be difficulties on return and that it would be extremely difficult for him to obtain anything like proper accommodation or employment. The judge addressed paragraph 276ADE(vi) in his decision at paragraphs 14 to 16. The judge directed himself first to the question which he considered reasonable which is how far can there be integration when the appellant and his wife have no place to stay. He noted the submission that the family home was no longer available, which he accepted, but he did not accept that there was absolutely no accommodation available as it could be rented pending reconstruction of housing and thus the real question was one of resources.

5. The judge then found that he had not been satisfied by the appellant's evidence that he would not be able to get employment and that the type of employment was uncertain, that the appellant was well-educated, shown himself to be adaptable and had not in fact applied for employment in Nepal. The judge then referred to the possibility of further earthquakes in the future, to which he did not attach much weight, and concluded that there were no such difficult obstacles to re-integration. The judge also went on to consider the matter pursuant to Article 8 outside the Rules, finding that removal would be proportionate.

6. The appellant sought permission to appeal on four specific grounds, first, that the judge had erred in his approach to whether property could be rented, the question being in fact would it meet the minimum required standard of suitability, which he had not answered, and second, that the judge had erred when referring to other types of housing that might be being built, the judge having left out an account of extremely low rate of recovery described in the background evidence demonstrating that it would be a significant time before new accommodation would be

available. Third, the judge then speculated about the possibility of another earthquake, fourth, that the judge had identified at paragraph 20 that the appellant's family would be returning to country which was not their own.

7. The permission to appeal was refused by the First-tier Tribunal and again by the Upper Tribunal. That decision was reduced upon the application for judicial review for the reasons set out in the note from the Lord Ordinary, Lord Arthurson. Subsequent to that, permission to appeal was granted by the Upper Tribunal on 18 October 2021.

8. I heard submissions from both representatives which were inevitably in the light of Lord Arthurson's reasonings focussed on grounds 1 and 2. I think I can deal very briefly with grounds 3 and 4. Ground 3 is, as Lord Arthurson observed, really a matter as to weight and that was a matter for the judge and what is averred does not disclose a legal error. Ground 4 can equally be disposed as simply it is clear that the judge meant Nepal when he wrote India. That is simply a slip which does not alter the import of the decision and it is clear from the rest of the decision that the judge was focussed on the situation in Nepal.

9. What the judge has not done in this case, although setting out paragraph 276ADE, is direct himself to the relevant case law and the test set out in SSHD v Kamara [2016] EWCA Civ 813 and in other decisions. That said, it is clear that the threshold to show that there are very significant obstacles to re-integration is a high one and it is in the context of Nepal highly relevant to consider whether somebody would be able to access accommodation and more to the point, what that accommodation would be and whether it would be suitable or not. The judge clearly had that in mind when considering accommodation and there was evidence before him to show that there were 500,000 families left unhoused after the earthquake and only 50,000 had been rehoused, some were living in camps, some in tents and fewer in rented accommodation. Clearly, there is a shortage of available of accommodation and the ability to access that will depend on resources both financial and one would assume family connections as these may be relevant.

10. The judge, having asked himself this question, fairly considered that the accessibility of accommodation and implicitly its suitability would depend on the resources available to the appellant. Clearly, somebody returning to Nepal hypothetically with millions of pounds in liquid assets would have no difficulty. Somebody returning with nothing and no skills and for example mental health problems would have the greatest of difficulty. Thus there is a wide spectrum of possibilities to be considered. What the judge does not do in this case is really specify where on that spectrum this case falls. It is clear that he does not accept the evidence that the appellant would be unable to get a job but he does not relate it back to the type of accommodation that could be available and whether that would be suitable such that it would not be a hurdle or burden to integration.

11. I had considered, however, whether that is a sufficient test. It is not a point that the judge appears to have considered and in effect it is a submission that he misdirected himself in law. I am not, however, persuaded that he did do so, nor is it clear that had the judge directed himself as the Secretary of State wishes that he had done that he would have come to the same conclusion. He would have asked different questions and have made other findings.

12. Is the error material? I consider that the error in this case is material because the judge has not in effect answered the question he posed, that is, whether accommodation would be available and by implication whether it would be suitable or affordable he has not in fact answered it and for these reasons I am satisfied that the reasoning on the particular facts of this case is inadequate and for that reason I set the decision aside on the basis that it involved the making of an error of law on the basis of what is averred in grounds 1 and 2. It is therefore unnecessary for me to consider grounds 3 and 4 although I have already done so. The fact that they are not made out does not affect the outcome of this appeal.

13. Having found that there is an error of law, I need to consider then how this should be remade.

14. There are now two children of the family which I consider is a new matter, albeit one the respondent ought to be able to consider. That, and the length of time that has elapsed militates in favour of this appeal being remitted to the First-tier Tribunal on the basis that no findings are preserved.

15. Although I no not direct it, there would appear to be significant merit in there being a Case Management Review in this case once remitted in order for the potential new matter to be addressed.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside

2. I remit the appeal to the First-tier Tribunal for it to make a fresh decision on all issues.

3. No anonymity direction is made.

Signed Date 18 May 2022

Jeremy K H Rintoul

Upper Tribunal Judge Rintoul