



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-003039  
[HU/53980/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 17 August 2023**

**Decision & Reasons**

**Promulgated**

**On 22 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**DHAN PRASAD GURUNG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr E Fripp, Counsel, instructed by Bond Adams Solicitors  
LLP

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 4 April 2022 of First-tier Tribunal Judge Mailer which refused the appellant's appeal brought on Article 8 ECHR grounds. .

## Background

2. The appellant was born on 28 December 1985. He is a citizen of Nepal.
3. The appellant's father served in the British Army. The appellant's father died in 2011. On 7 October 2011 the appellant's mother was granted settlement on the basis of the respondent's policy regarding Gurkha veterans. On 24 January 2013 the appellant's mother came to the UK.
4. The appellant applied for entry clearance to join his mother on 29 October 2015 but was refused on 23 November 2015. He made a further application on 30 May 2018 but this was also refused on 17 August 2018. The appellant appealed but the appeal was refused by First-tier Tribunal Judge O'Keeffe in a decision issued on 8 July 2019. An appeal to the Upper Tribunal was unsuccessful.
5. The appellant made a further application for entry clearance on 16 March 2021. That application was refused on 21 June 2021.
6. The appellant appealed again and the appeal came before Judge Mailer on 11 March 2022. Judge Mailer concluded that the appellant had not shown that he had a family life with his mother.
7. This appeal can be dealt with relatively shortly where Ms Lecointe conceded for the respondent that the grounds challenging the findings on family life had merit and where she accepted that this was a case that came within the guidance in Jitendra Rai v Entry Clearance Office Delhi [2017] EWCA Civ 320 and Ghising and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 00567 (IAC). The evidence in the case showed that there was real, effective and committed support and that where the historic wrong had prevented the appellant from being settled in the UK long ago, that factor should ordinarily determine the outcome of the Article 8 ECHR appeal and nothing indicated to the contrary here.
8. I found that the concessions set out above were properly made for the respondent. I found that the decision of the First-tier Tribunal disclosed an error of law such that it had to be set aside to be remade. I remade the appeal as allowed where the evidence provided showed that the appellant came within the ratios of Rai and Ghising.

## **Notice of Decision**

9. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
10. The appeal is remade as allowed under Article 8 ECHR.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 23 August 2023