



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003409
First-tier Tribunal No HU/54308/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21st of November 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

SUBBA BIRENDRA

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(anonymity order not made)

Respondent

For the Appellant: D. Shrestha, Counsel, instructed by Ghurkha Solicitors Limited.
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer.

Heard at Field House on 18th August 2023

DECISION AND REASONS

Introduction

1. The appellant, a national of Nepal, came to the United Kingdom on 7 May 2018 on a spousal Visa. His marriage broke down. His Visa expired on 10 January 2021. The same day he applied for leave to remain on the basis of a new relationship. This was with Ms Nanda Kumari Limbu Rai. For convenience I will refer to her hereinafter as the sponsor.
2. The sponsor is also from Nepal. She also came to the United Kingdom in 2008 on a spouse Visa to join her second husband, her first marriage having broken down. This union produced a daughter born on 18 September 2012. This relationship in turn broke down. The sponsor retained custody and she and her child are British nationals.
3. The appellant and his sponsor began to cohabit in December 2020. The sponsor became pregnant by the appellant. She gave birth to a boy on 1 July 2022 .

4. The appellant's application was refused under the immigration rules on the basis the relationship and the eligibility requirements were not met. He was not assisted by paragraph EX 1(b).
5. His appeal was heard by First-tier Tribunal Judge Ford in a CVP hearing listed on 17 June 2022. Both parties were represented. The appeal was dismissed. The judge did not see insurmountable obstacles to family life continuing in Nepal. Alternatively, the appellant had the option of returning to Nepal alone and then making an application for entry clearance.

The Upper Tribunal.

6. Permission to appeal was granted by Upper Tribunal Judge Smith on 23 September 2022. It was arguable the judge erred in finding the appellant was in the United Kingdom in breach of immigration laws at the time of the application. His application was submitted on the last day of his extended leave.
7. It was also arguable the judge erred in not permitting evidence or allowing submissions concerning the appellant's relationship with the sponsor's child. The judge was of the view that this was a new matter whereas it had in fact been considered by the respondent in the refusal letter.
8. It was also arguable the judge may have misunderstood the family court documents relating to the sponsor's previous marital status.
9. At the outset of the hearing Ms Everett accepted there was a material error in the decision in relation to the judge's unwillingness to allow evidence about the appellant's relationship with the sponsor's child. She said that in the circumstances she could not say it was not material. She invited me to remake the decision and allow the appeal, particularly having regard to the fact the appellant's child, a British national, had now been born.
10. Having regard to the respondent's concession a material error in the decision is accepted and the decision is set aside. I remake the decision allowing the appeal in respect of article 8 and the right to family life.

Notice of Decision

The decision of First tier Tribunal Judge Ford involved the making of an error of law and is set aside. I remake the decision allowing the appeal in respect of article 8 and the right to family life.

Francis J Farrelly

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber