



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002069

First-tier Tribunal Nos: HU/52438/2023
LH/04016/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

HAIKAM SING RAI
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel instructed by Everest Law Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 28th June 2024

DECISION AND REASONS

1. The Appellant is a citizen of Nepal whose date of birth is recorded as 6th June 1956. On 19th September 2022 he made application for entry clearance to join his parents in the United Kingdom as an adult dependent child of his stepmother, widow of his late father, a former Gurkha soldier who died on 22nd November 1993. On 11th January 2023 a decision was made to refuse the application and so the Appellant appealed on human rights grounds outside the Rules to the First-tier Tribunal.
2. The appeal was heard on 29th February 2024 by First-tier Tribunal Judge Shakespeare who in a decision dated 8th March 2024 dismissed the appeal on the basis that the Appellant had not established the existence of family life but had the Appellant been able to do so the appeal would have been allowed.

3. Not content with that decision the Appellant applied for permission to appeal to the Upper Tribunal. In summary the grounds challenge findings of fact on the basis that the findings were made against the weight of the evidence, it being submitted that contrary to the finding:
 - (a) passport stamps did demonstrate that the Sponsor had visited Nepal;
 - (b) the stepmother's evidence was clear;
 - (c) there had been a period of lengthy cohabitation of Appellant and Sponsor.
4. On 9th May First-tier Tribunal Judge Dainty granted permission on the basis that the threshold to meet Article 8 was not high. Particular weight was given in the granting of permission to the interpretation of the judge of the passport stamps said to infect the whole analysis as to whether Article 8 was engaged.
5. It is unclear to me why it was that Judge Shakespeare had any difficulty at all in interpreting the stamps in the passport. I find that they are clear and that does infect the whole of the decision.
6. I should add that when this matter was called on, I gave my preliminary view to both representatives being that there was a material error of law and that the matter should be remitted to the First-tier Tribunal. Both representatives agreed that that was the proper course and so it is not necessary for me to say more.
7. This matter must be remitted in my view because notwithstanding those stamps that does not of itself demonstrate family life, that will have to be determined by a fresh consideration of the available evidence.

Notice of Decision

There was a material error of law in the decision of the First-tier Tribunal. The decision is set aside and is remitted to the First-tier Tribunal to be heard afresh at Taylor House with no preserved findings of fact.

Directions

By way of directions there will need to be an Nepali interpreter with the matter, listed for two hours.



Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 July 2024