



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001477

First-tier Tribunal No:
HU/53972/2023

LH/010

40/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 10 January 2025**

Before

DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE

Between

DEU MAYA PAIJA PUNN

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Ellis Wilford, counsel

For the Respondent: Ms McKenzie, Home Office Presenting Officer

Heard at Field House on 4 June 2024

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge O'Garro heard on 13 February 2023 and promulgated on 14 February 2023. By the decision, First-tier Tribunal Judge O'Garro refused the appellant's appeal against a decision of the Respondent dated 31 May 2022 whereby the Respondent refused her application for entry clearance as the adult dependent child of her mother. Her late father had served within the Brigade of Gurkhas.

2. First-tier Tribunal Judge Landes granted permission to appeal on 5 April 2023. She commented that it was arguable that the judge had applied the wrong test for article 8.
3. The Upper Tribunal regrets the delay in promulgating this judgment. The appeal was heard on submissions alone, with no oral evidence. I have a clear note of the submissions of both parties and also the material which was before the First-tier Judge. I reached my decision shortly after the hearing.

Anonymity

4. No anonymity direction has been made in this case.

The hearing

5. At the hearing, it was agreed between counsel for the Appellant Mr Wilford and the Presenting Officer Ms McKenzie that the judge had fallen into error in paragraph 35 of the judgment. It states:

35. Mrs Pun said that she has sent money to the appellant for her maintenance since coming to the United Kingdom . There is not a complete trail of money being sent to the appellant from the time the sponsor left Nepal to present before the Tribunal but taking into account the fact that Nepal is a poor country, I will accept that money was sent to the appellant . However , even if the sponsor had provided some financial assistance to the appellant , I find this is expected in Nepalese culture and therefore does not suggest without the added element of emotional dependency , a bond over and above that usually expected in a relationship between adult parents and their children leading to a finding of family life .

6. It is not clear what is the basis for the finding that providing financial assistance is expected in Nepalese culture, nor is it clear whether that was considered to be distinct from the cultures of other countries.
7. It was agreed that this understanding of Nepalese culture had not been put to the appellant, and so she had not had an opportunity to consider and respond to it.
8. It was agreed by counsel and the Presenting Officer that it was appropriate to remit the case to the First-tier Tribunal.
9. I have considered the Senior President of Tribunal's Practice Statement dated 11 June 2018 and in particular the provisions on the disposal of appeals in the Upper Tribunal. At 7.2 the Practice Statement states that
7.2. The Upper Tribunal is likely on each such occasion to proceed to remake the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal

10. I consider that the appellant did not have an opportunity to consider and respond to the judge's view about the culture of remitting money in Nepalese society, and that accordingly the case properly comes within the ambit of 7.2(a) above.
11. On that basis the appeal is allowed. The case is remitted to be heard by a different judge of the First-tier Tribunal.

Conclusion

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

The appeal is to be remitted to the First-tier Tribunal for determination of the appellant's article 8 rights.

Notice of Decision

The appeal is allowed on human rights grounds.

John Jolliffe

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024

TO THE RESPONDENT FEE AWARD

I make no fee award.

J Jolliffe

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email