



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/19459/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 7 February 2019**

**Decision & Reasons
Promulgated
On 13 February 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr THUR BAHADUR THAPA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jaja, Counsel (instructed by Howe & Co)
For the Respondent: M J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Nepal, born on 19 June 1967. He had sought leave to remain outside the Immigration Rules and to rely on the Secretary of State for the Home Department's Gurkha dependants policy, among other matters. First-tier Tribunal Judge Vincent Fox found that there was no right of appeal as the First-tier Tribunal

lacked jurisdiction, in a decision and reasons promulgated on 18 April 2018. The subsequent somewhat complex history of the present appeal is set out in detail in the grant of permission to appeal prepared by Upper Tribunal Judge Hanson, dated 12 December 2018, which I respectfully adopt.

2. Upper Tribunal Judge Hanson when granting permission to appeal identified several potential arguable errors of law. He proposed that if the Secretary of State for the Home Department and the Appellant's advocate agreed, the appeal should be remitted by consent to the First-tier Tribunal, for the appeal to be reheard by another First-tier Tribunal judge, other than Judge Vincent Fox, on the basis that the First-tier Tribunal had jurisdiction and that the appeal lay under Article 8.
3. Although the 14 days fixed by Upper Tribunal Judge Hanson for a response was not complied with, by an email dated 6 February 2019, Mr P Deller, Senior Presenting Officer in summary waived any further jurisdictional arguments and confirmed that the application made by the Appellant had raised sufficient Article 8 ECHR matters to warrant being treated as a human rights claim by the Respondent. It was accepted that the original determination should be set aside for error of law and the appeal remitted to the First-tier Tribunal.
4. At the hearing Ms Jaja for the Appellant confirmed that the Appellant consented to the set aside and remittal.
5. In the light of the Respondent's concession, the tribunal accordingly finds that there were the material errors of law identified by Upper Tribunal Judge Hanson when granting permission to appeal., principally the failure to identify a valid Article 8 ECHR ground of appeal which gave the First-tier Tribunal jurisdiction over the Secretary of State for the Home Department's decision dated 28 July 2016.
6. The onwards appeal is allowed. The original decision and reasons is set aside. An early date for the rehearing should be found if at all possible, given the delays to which this appeal has been subject.

DECISION

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

The appeal is to be reheard before any First-tier Tribunal Judge except First-tier Tribunal Judge Vincent Fox.

Signed
2019

Dated 7 February

Deputy Upper Tribunal Judge Manuell