



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

Appeal Number: HU/22137/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15th October 2019**

**Decision & Reasons Promulgated
On 07th November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MANOJ RAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lafne of Counsel, Everest Law Solicitors

For the Respondent: Mr Singh, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 1st January 1988 is a citizen of Nepal. The Appellant was represented by Mr Lafne of Counsel. The Respondent was represented by Mr Singh, a Presenting Officer. The Appellant had made application for settlement in the United Kingdom as the adult dependent child of his mother who was a widow of a late former Ghurkha soldier. The Appellant's application was refused on 21st September 2018. The Appellant had appealed that decision and his appeal was heard by Judge

of the First-tier Tribunal Khawar sitting at Taylor House on 4th June 2019. A judge had dismissed the Appellant's appeal.

2. Application for permission to appeal was made and granted on 6th September 2019 on the basis that it was arguable errors of law had been made in that the judge had overlooked potentially important evidential points.
3. The matter came before me to decide firstly whether an error of law had been made in this case and in accordance with standard directions.

Submissions on Behalf of the Appellant

4. It was submitted the central issue in this case was dependency of the Appellant upon his mother and the judge had not looked at evidence of financial dependency properly nor aspects of emotional dependency. It was further said that perhaps it had not been appreciated that the mother had only been in the UK for a few months prior to the appeal.

Submissions on Behalf of the Respondent

5. Mr Singh noted the judge's decision and accepted the point that I made when looking at the paragraph dealing with financial dependency.
6. I indicated at the hearing that I found a material error of law but would provide a decision in writing. I now provide that decision.

Decisions and Reasons



7. The central issue in this case was whether there was a financial and/or emotional dependency between the Appellant and his mother, the widow of a former Ghurka soldier. She and the Appellant had been living together in Nepal and had both made an application at the same time for entry clearance. Whilst her application was accepted the Appellant's was refused.
8. In examination of any potential financial dependency the judge at paragraph 14 stated "in my judgment the most significant lacuna in the evidence in this case is lack of documentary evidence to establish that the Appellant had access to the Sponsor's bank account and therefore financial dependency is not adequately established". Although the judge had identified pages 31 to 32 of the Appellant's bundle as being bank statements of the mother's account at Ghurkha Finance Limited he failed to make reference to the fact that there were five payments of money, three at least in consecutive months from the mother to the Appellant in the relatively short time she had been in the UK and separated from the Appellant. The failure to refer to or provide any assessment of that evidence was a material error of law in the context of this case and the clear significance the judge placed on what he said as being a lacuna in the evidence.

9. At paragraph 16 the judge referred to there being only a “modicum of evidence of contact between the Appellant and Sponsor”. That is factually correct but appears to be almost the only analysis of potential emotional dependency between the Appellant and his mother. I find that with particular respect to the financial matter there was a failure to refer to relevant evidence or arguably consider evidence available such that it led to a material error of law.

Notice of Decision

10. I find that a material error of law was made by the judge in this case and I find the decision of the First-tier Tribunal needs to be made afresh in the First-tier Tribunal before a judge other than Judge Khawar.

No anonymity direction is made.

Signed  Date 
Deputy Upper Tribunal Judge Lew

DIRECTIONS

1. The decision of the First-tier Tribunal needs to be made afresh within the First-tier Tribunal sitting at Taylor House before a judge other than Judge Khawar.
2. A time estimate of one and half hours should be given to this case.
3. A Nepalese interpreter should be provided unless the Appellant’s representatives indicate in advance of the hearing that no interpreter is required.
4. The parties are at liberty to file any fresh evidence in compliance with the Procedure Rules and to serve such evidence upon the other party and the Tribunal at least ten days prior to the hearing.