



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

Appeal Number: HU/18205/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 February 2020**

**Decision & Reasons  
Promulgated  
On 11 February 2020**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**Mr Manohar Chongbang Limbu  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Jesurum, counsel instructed by Everest Law Solicitors  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Monson, promulgated on 26 July 2019. Permission to appeal was granted by First-tier Tribunal Judge Landes on 7 November 2019.

### Anonymity

2. No direction has been made previously, and there is no reason for one now.

### Background

3. The appellant is a national of Nepal who was aged 33 at the time of his application for leave to enter the UK as the over-aged child of a former Gurkha soldier, made on human rights grounds.
4. The Entry Clearance Officer refused that application on 12 July 2018 because the requirements of Annex K of the Rules were not met and the ECO was not satisfied that the appellant had established a family life with his parents in the UK, who moved to the UK 7 years earlier.

### The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the sponsor was not called to give evidence, the judge noting that counsel for the appellant "*reported*" his further instructions on queries raised by the respondent's representative. Counsel for the appellant stated that he was not seeking to establish dependency but only that there was "*real or committed or effective support.*" The judge indicated that he would be assisted by oral evidence of the sponsor, however the appeal continued by way of submissions alone. The First-tier Tribunal accepted that there was a subsisting family life between the appellant and his parents at the time of their departure from Nepal for the UK but found it unlikely that there was subsisting family life at the time of the hearing. The Tribunal considered that the ongoing contact between the appellant and his parents was that of "*normal emotional ties between adult members of a Gurkha family.*" The appeal was dismissed.

### The grounds of appeal

6. There are four grounds of appeal. Firstly, that there had been an incorrect application of the family life threshold. Secondly, that alternative support was not relevant to Article 8(1) support between the appellant and his parents. Thirdly and fourthly, there was a failure to have regard to material matters.
7. Permission to appeal was granted on the basis that ground 4 was arguable however, permission was not refused on any ground.
8. The respondent did not file a Rule 24 response.

### The hearing

9. At my invitation, Mr Jesurum focused his submissions on grounds 4 and 2. Mr Tarlow wished only to state that the decision under challenge was

sustainable, that the judge came to a conclusion that he was entitled to come to and that even if there was an error, it was not material.

### Decision on error of law

10. The comments of the First-tier Tribunal at [37] of the decision indicate that the judge assessed the existence of family life by a comparison of what he considered to be normal for people from the appellant's culture. At [36] the judge reproduced a section of a document from Mr Kaynan Bhakta, a Nepalese sociologist, which formed part of the appellant's bundle. That segment spoke of the strong family ties in Nepalese families and the importance of observing rituals, travel to Nepal and maintaining close relationships with family members. The judge utilised this material at [37] to come to the following conclusion; "*Against this background, I consider that the ongoing contact between the appellant and his parents is consistent with normal emotional ties between adult members of a Gurkha family.*" I accept Mr Jesurum's argument that the judge's approach was erroneous in this regard in that he compared the appellant's circumstances with what he was told about the normal emotional ties within families in Nepalese culture. Such an approach could result in discriminatory outcomes if an appellant from a culture with strong ties is expected to show more to establish the existence of family life than an appellant from a culture with less strong ties. I am satisfied that this error is material as the judge plainly came to his conclusion in the light of consideration of evidence regarding Nepalese or Gurkha families and without such an error, he could have reached a different outcome.
11. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the facts of this matter were not fully explored at the First-tier Tribunal owing to the lack of live witness evidence or even a complete witness statement and it would be unfair to deprive the parties of such consideration.

### Decision

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

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Monson.**

Signed:

Date: 7 February 2020

Upper Tribunal Judge Kamara