



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/19673/2019
& HU/19681/2019

THE IMMIGRATION ACTS

Decided under Rule 34
Without a hearing on
20th October 2020

Decision & Reasons Promulgated
On 26th October 2020

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR SABINDRA SHRESTHA
MRS ROHINI SHRESTHA
(NO ANONYMITY DIRECTIONS)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal by the appellants against the decision of First-tier Tribunal Judge Adio, promulgated on 14th April 2020, by which he dismissed the appellants' appeals against the respondent's refusal of their human rights claims.
2. In essence, the appellants' claims involved the following issues: whether, as an adult couple, the refusal of their leave to remain and consequential return to their country of origin, Nepal, would be in breach of their rights to respect for their family and private life under article 8 of the European Convention on Human Rights ('ECHR')

by virtue of the time spent by the couple in the UK and the very significant obstacles to their integration in Nepal, because of the earthquake damage to that country and the first appellant's lack of progress in his UK studies as a result of the loss of his sponsoring college's licence; and the second appellant's rights under article 3 ECHR, by virtue of a 'severe obstructive sleep' condition, for which she was being treated in the UK and for it was asserted that there was no comparable treatment in Nepal. The respondent rejected these claims and the appellants appealed that refusal.

The FtT's decision

3. The appellants initially requested an oral hearing but then requested a decision on the papers. It was clear from the decision that the FtT had before him very limited papers (§[14]), having previously directed that all evidence be sent by 27th March 2020. The appellants' solicitors sent a substantial bundle on 26th March 2020, which was faxed on 26th March 2020 and also received by post by the Tribunal on 30th March 2020, after the FtT considered the appeal on the papers, on 27th March 2020. The FtT did not consider (because it was clear he did not have before him), the appellants' documents. Unsurprisingly, the FtT dismissed the appeals on article 3 and 8 grounds because of the lack of evidence (§[24], [25] and [27]).

The grounds of appeal and grant of permission

4. The appellant lodged grounds of appeal on 28th April 2020, which are essentially that the FtT erred in failing to consider the available evidence and apply the law to that evidence.
5. First-tier Tribunal Judge Fisher granted permission on 1st June 2020 on all grounds.

Directions in the light of Covid-19 and concession by the respondent

6. Upper Tribunal Judge L Smith issued directions on 6th August 2020, indicating that in her provisional view, the questions of whether the FtT had erred in law and whether his decision should be set aside should be resolved at a remote hearing, via Skype for Business. Nevertheless, in light of the respondent's concession on 26th August 2020 that the FtT's decision contained errors of law, on the basis that he failed to consider material evidence, such that the FtT's decision should be set aside, the parties agree that a hearing to consider the issue of an error of law is unnecessary and the FtT's decision can be set aside without the need for a hearing. Both parties also urged me to remit the appeal back to the First-tier Tribunal, on the basis that there had been no substantive consideration by a First-tier Tribunal of any of the evidence. In light of the concession, I agree that it is appropriate to decide the issues concerning an error of law on the papers, without the need for a hearing.

Decision on error of law

7. **In light of the respondent's concession, there are errors in the decision of Judge Adio and I must set it aside. I do so without preservation of any finding of fact, so**

that the appeal must be considered afresh. Therefore, the appellants' appeals succeed.

Disposal

8. With reference to paragraph 7.2 of the Senior President's Practice Statement, given that the First-tier Tribunal has not considered any of the appellants' evidence, this is a case where, exceptionally, it is appropriate that the remaking is remitted back to the First-tier Tribunal.

Directions to the First-tier Tribunal

9. This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.
10. The remitted appeal shall not be heard by First-tier Tribunal Judge Adio.
11. There are no anonymity directions.

Signed *J Keith*

Date: 20th October 2020

Upper Tribunal Judge Keith