**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005612

First-tier Tribunal No: HU/54460/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 25th of October 2024

**Before**

**UPPER TRIBUNAL JUDGE BULPITT**

**Between**

**Prem Bahadur Baniya**
**(NO ANONYMITY DIRECTION MADE)**

Applicant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellant: Mr A Slatter – Counsel instructed by Deccan Prime Solicitors
For the Respondent: Mr N Wain – Senior Home Office Presenting Officer

**Heard at Field House on 23 October 2024**

## DECISION AND REASONS

*1.* The is the appellant's appeal against the decision of First-tier Tribunal Judge Symes (the Judge) dated 28 February 2023 in which the Judge dismissed the appellant's appeal against the respondent's decision to refuse his human rights claim to remain in the United Kingdom.

### Background

*2.* The appellant is a 52 year old citizen of Nepal. He arrived in the United Kingdom in December 2006 with permission as a visitor. He did not leave however when his visa expired and overstayed. He was next encountered by immigration authorities on 19 June 2007 and was served with a removal notice. In response to that notice the appellant claimed to be a refugee from Bhutan. That false claim was accepted by respondent who in July 2007 granted him asylum and limited leave to remain in the United Kingdom. In May 2011 the appellant's wife Godabari Baniya successfully applied to enter the United

Kingdom and join him, and the appellant and Ms Baniya were subsequently granted Indefinite Leave to Remain in the United Kingdom in December 2012 and October 2013 respectively.

*3.* The appellant's deception was exposed when he made an application for British citizenship in 2014 and as a consequence his refugee status and Indefinite Leave to Remain were revoked in November 2014. At the same time he was served with notice of liability for removal, but he has subsequently remained living in the United Kingdom without leave. The appellant made an application for leave to remain in 2018 which was refused and an appeal against that refusal withdrawn the same year. In 2019 he was again served with notice that he was liable for removal from the United Kingdom, though he was not removed and has not left.

*4.* In the meantime in November 2016 Mrs Baniya was granted British citizenship. In February 2017 the two sons of the appellant and Ms Baniya - Prajwol and Mandip - were granted Indefinite Leave to Enter the UK and join their mother. They did so on the basis of an application in which it was falsely claimed that their father was dead. Ms Baniya's British citizenship was subsequently revoked when that deceit became apparent, though she has been granted limited leave to remain in the United Kingdom. Prajwol and Mandip have subsequently been granted Indefinite Leave to Remain in the United Kingdom, though Prajwol is currently studying in Bulgaria.

*5.* On 4 February 2022 the appellant made the application for leave to remain on the basis of his private life in the United Kingdom that led to this appeal. His application was refused on 8 July 2022 on the grounds of suitability in view of the appellant's previous deception. The respondent also did not accept that the appellant met the requirements in the Immigration Rules for being granted leave to remain on the basis of his private or family life and concluded that the appellant's removal would not result in unjustifiably harsh consequences for him, Ms Baniya, Prajwol or Mandip and so was compliant with Article 8 of the Convention. The appellant appealed against that decision.

**The Judge's Decision**

*6.* The Judge heard the appeal on 9 February 2023. Before the Judge was an appellant's bundle of evidence consisting of 20 pages and a respondent's bundle of evidence consisting of 167 pages and which included documents the appellant had submitted with his application. The Judge heard oral evidence from the appellant and Ms Baniya and at the end of the hearing reserved his decision.

*7.* The Judge provided that decision with his reasons on 28 February 2023. The Judge found that the appellant's *"dishonesty of a serious kind, prolonged and significant"* meant that he failed to meet the suitability requirements for being granted leave to remain under the Immigration Rules ([19] – [20] of the decision). He then considered the appellant's private and family life *"outside the immigration Rules"* noting that *"I am concerned as to the true facts here"* and assessing in the following two paragraphs of his decision the extent of and depth of the appellant's relationships with Ms Baniya, Prajwol and Mandip. As this appeal to the Upper Tribunal relates to those two paragraphs of the Judge's decision I set them out in full:

> 21. …The skeleton argument asserts that the Appellant is part of a fully functioning family unit, yet the application form of 4 February 2022 states *"I am not applying as a family member – I am only applying on the basis of private life in the UK";* and Dr Antonesei's report refers to his wife filing for divorce having discovered that he had obtained status in a false identity;

> Prajwol writes that his father had had to leave them whilst they were still children. His wife attended the Tribunal before me to support his case but both her witness statement and his own are vague in the extreme as to their family circumstances and whether their relationship is extant – rather than detailing the substance and strength of their relationship the Appellant's statement at [9] – [10] refers obliquely to the Respondent's enquiries into that issue as to which he simply says *"I have provided information as instructed".* I draw the conclusion that the Appellant is no longer in a relationship with his wife and that whilst she may be supportive to her sons' father remaining in this country, there is no genuine and subsisting relationship between them.
>
> 22. As to his relationship with his two adult sons, they are both living independently of their parents. It is unclear how often they see him. Doubtless the Appellant was a loving father at times during their youth, and no doubt they have strong feelings for him and wish that he could remain in this country. But he was living in the UK whilst they lived in Nepal from 2006 to 2017, and he clearly has not told the full truth as to their family circumstances from 2017 to the time they left home. I do not accept that they have meaningful family life with their father given their independent lives now, combined with the limited time that they can reasonably be inferred to have spent with him during their childhood."

*8.* The Judge then considered the appellant's private life including his *"parlous mental health"* which involved the appellant suffering from anxiety and depression. Having done so, the Judge concluded that the appellant's private and family life was not such that his mental health would deteriorate by departing the United Kingdom and that the appellant would not face very significant obstacles reintegrating in Nepal. ((23] – [24] of the decision).

*9.* At [25] the Judge finally concluded that the appellant's private and family life ties in the United Kingdom were *"relatively modest"* and insufficient to outweigh the public interest in removal. He therefore dismissed the appellant's appeal.

**The Appeal to the Upper Tribunal**

*10.* First-tier Tribunal Judge Landes (as she then was) granted the appellant permission to appeal against the Judge's decision on a single ground which argued that the Judge had failed to take into account (indeed "ignored") relevant factors when determining the public interest and proportionality of removal under Article 8 of the Convention.

*11.* At the hearing before me Mr Slatter explained that ground of appeal arguing that the Judge erred when considering the nature and extent of the appellant's relationship with Ms Baniya and when considering the appellant's relationship with Prajwol and Mandip. Mr Slatter argued that the Judge's finding that the appellant does not have a genuine and subsisting relationship with Ms Baniya was not supported by the evidence and that the Judge erred in his consideration of a reference that was made in the medical report of Dr Antonesei to Ms Bayina seeking a divorce from the appellant which, Mr Slatter argued did not support a conclusion that the couple are not in a genuine and subsisting relationship now. In relation to the Judge's consideration of the appellant's relationship with his sons, Mr Slatter argued that the Judge erred by stating in the first line of [22] of his decision: *"they are both living independently of their parents"* without reference to evidence in a letter from Mandip in which he said he was living

together with his parents or to evidence from both sons about the support they get from their parents while studying at University.

*12.* Mr Wain conceded that the Judge erred when stating that the appellant's sons are both living independently of their parents, however he argued that the error was not material to the Judge's decision as the Judge went on to recognise that the appellant had an existing private and family life in the United Kingdom but concluded that it was outweighed by the public interest in the appellant's removal. Mr Wain did not accept that the Judge erred when finding that the appellant and Ms Baniya were not in a genuine and subsisting relationship, arguing that the Judge gave full and sustainable reasons for that conclusion.

*13.* At the end of the hearing I reserved my decision which I now provide together with my reasons.

**Analysis and Decision**

*14.* I am satisfied that there was no error of law involved Judge's conclusion that the appellant is not in a genuine and subsisting relationship with Ms Baniya, that this was a finding that was open to the Judge on the evidence and that it was adequately explained in the Judge's decision. As the Judge indicated at the beginning of [21] of his decision, the appellant's unimpressive history of deceit plus the nature of the application being made, in particular the explicit statement that he was not applying for leave to remain as a family member, left the Judge *"concerned as to the true facts."*

*15.* The Judge's subsequent conclusion that the appellant was not in a genuine and subsisting relationship with Ms Baniya is explained in [21] of the decision by reference to a number of different aspects of the evidence. Those factors included the *"vague in the extreme"* evidence of the appellant and Ms Baniya about their family circumstances and whether their relationship is extant. That vague in the extreme evidence included the witness statement from the appellant in which he said without further explanation that *"I was previously residing at the address of …. with my family"* (my emphasis). The factors also included, as already mentioned, the fact that the appellant explicitly stated he was not applying for leave as a family member but that he was applying only on the basis of his private life, and also evidence from Prajwol that the appellant had had to leave the family whilst they were still children.

*16.* The factors the Judge identified as leading to the conclusion that there was not a genuine and subsisting relationship between the appellant and Ms Baniya also included reference in Dr Antonesei's report dated 29 June 2020 to Ms Baniya filling in the papers for divorce. I do not accept the argument made by Mr Slatter that this was the primary explanation for the Judge's conclusion. Neither do I accept that the Judge misunderstood this evidence when he described it as saying that Ms Baniya had filed for divorce. The statement from an independent witness that Ms Baniya had completed the forms necessary for getting a divorce from the appellant in 2020 was clearly a relevant consideration for the Judge when assessing the nature of the relationship between the appellant and Ms Baniya in 2023.

*17.* Mr Slatter referred to evidence before the Judge which showed that despite what was said by Dr Antonesei, the appellant and Ms Baniya co-habited after 2020 and argued that this evidence was not taken into consideration by the Judge. I remind myself of [2](iii)] of Volpi and Volpi [2022] EWCA Civ 464 which states that an appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into

his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. Here, although the Judge does not refer in his decision to documentary evidence of co-habitation there is no compelling reason to suggest that the Judge has not taken the evidence into consideration. On the contrary, in a decision which exhibits obvious care and attention to the documentary evidence there is every reason to conclude that the Judge has had regard to this evidence.

*18.* Viewed holistically, in the light of the evidence as a whole and in the context of a history of deceit and false claims about the family, the Judge's conclusion that there was no genuine and subsisting relationship between the appellant and Ms Baniya was entirely understandable and disclosed no error of law.

*19.* Notwithstanding Mr Wain's concession that the Judge's comment that the appellant's sons are living independently of their parents amounted to an error, and without going behind that concession, I am satisfied that overall the Judge's assessment of the appellant's relationship with his sons did not involve an arguable material error of law.

*20.* The Judge's consideration of the appellant's relationship with his sons comes in the context of the Judge's earlier finding that the appellant is no longer in a genuine and subsisting relationship with their mother. It also includes the Judge's comment that the appellant's evidence about his family circumstances was vague in the extreme, indeed having said that he was *previously* living with his family, the appellant only says in his statement "*I have my wife and two children. I have established private and family life in the UK"* without giving any further explanation of his relationship with Prajwol and Mandip.

*21.* The Judge identifies at [11(b) and (c)] the evidence from Prajwol and Mandip given in letters which were part of the documentary evidence the appellant relied upon. The Judge identified from those letters evidence that both were studying in University, that their mother paid for their tuition and that although the appellant wanted to contribute to household bills his immigration status prevented him from doing so. The Judge also noted Prajwol's evidence in his letter that the appellant had left them whilst they were still children but he was in touch with them daily. The Judge also noted Mandip's evidence that the appellant had always cared for him including when he developed Epilepsy. There is no reason to assume that having identified this evidence the Judge then failed to take it into consideration.

*22.* At [22] of his decision the Judge recognises that the appellant was doubtless a loving father during his sons youth, and that no doubt Prajwol and Mandip have strong feelings for him and wish that he could remain in this country. The Judge also identifies in that paragraph that the appellant was living in the United Kingdom while his sons were in Nepal between 2006 and 2017 and, in a reference no doubt to his earlier conclusion about the relationship between the appellant and Ms Baniya, that the appellant has clearly not told the full truth about his family circumstances after 2017. These are all relevant factors to the Judge's assessment of the extent of the relationship between the appellant and his sons. It was therefore, as the Judge says at the end of [22] of his decision, not only the independence of Prajwol and Mandip that led the Judge to the conclusion that there is no meaningful family life between them and the appellant, but also the limited time that they can reasonably be inferred to have spent with him during their childhood.

*23.* In the light of all the evidence and taking the Judge's decision as a whole, whilst it was common ground before me that the Judge erred when describing Prajwol and Mandip as living independently from their parents, I am satisfied that the Judge's conclusion at [25] that the appellant's private and family life ties in the United Kingdom are *"relatively modest"* is unimpeachable. The Judge has demonstrably considered with care the evidence concerning the appellant's relationship with his sons. While it was an error to say that those sons are living independently of their parents, that was not a material error because the overall analysis of the appellant's relationship with his sons had regard to all of the evidence and ended with a realistic and adequately explained conclusion that the appellant's family and private life in the United Kingdom was in all the circumstances "relatively modest." Significantly the Judge's conclusion was not that there was no family life in the United Kingdom at all.

*24.* When that modest family and private life was balanced against the strong public interest in the removal of the appellant which arises from his unenviable immigration history, the conclusion that the public interest outweighed the appellant's private interests was inevitable. The ground of appeal advanced therefore does not disclose an error of law in the Judge's decision and there is no basis for the Tribunal to interfere with that decision.

*25.* An anonymity order was made by Upper Tribunal Judge Gill when granting permission to appeal because of the medical evidence about the appellant that was submitted with the appeal. The "Upper Tribunal Immigration and Asylum Chamber Guidance Note 2022 No 2: Anonymity Orders and Hearing in Private" however recognises at [31] that the revelation of the medical condition of an appellant will not normally require the making of an anonymity order unless disclosure of the fact of such a condition gives rise to a real likelihood of harm to a person. There is nothing to indicate that this is such a case. Taking the important principle of open justice as my starting point, I am not satisfied in these circumstances that it is necessary to maintain the anonymity order.

**Notice of Decision**

The appellant's appeal is dismissed

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands.

Luke Bulpitt

**Upper Tribunal Judge Bulpitt**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 October 2024