



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

**Case No: UI-2024-002659**  
**On appeal from:**  
**HU/52165/2023**  
**LH/03488/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 08 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**BISHNU PUN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Michael West of Counsel, instructed by Everest Law Solicitors

Limited

For the Respondent: Mr Andrew McVeety, a Senior Home Office Presenting Officer

**Heard at Field House on 30 September 2024**

**DECISION AND REASONS**

**Introduction**

1. The appellant challenges the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 19 February 2023 to refuse her entry clearance as an adult child of a Gurkha soldier discharged before 1 July 1997, with reference to Article 8 ECHR and paragraph EC-DR.1.1 of Appendix FM of the Immigration Rules HC 395 (as amended).

2. **Mode of hearing.** The hearing today took place as a blended face to face and Microsoft Teams hearing, with Mr McVeety for the respondent appearing by CVP and everyone else in the hearing room at Field House. There were no technical difficulties. I am satisfied that the hearing was completed fairly, with the cooperation of both representatives.
3. For the reasons set out in this decision, and having regard to Mr McVeety's concession that there is an error of law in the decision of the First-tier Tribunal, I have decided to set aside the decision of the First-tier Tribunal and allow the appeal outright.

## **Background**

4. The appellant is a citizen of Nepal and the adult daughter of a Gurkha soldier. The appellant seeks to rejoin her widowed mother who is settled in the UK. Although the appellant has been married, she herself is widowed and family life was resumed in 2021.
5. The respondent refused leave to enter on the basis that the appellant had married and had children and thus was not a dependant of her UK-based mother. She did not accept that the appellant was financially and emotionally dependent upon her sponsor mother beyond the ties of affection normally to be expected between a parent and adult child.
6. Alternatively, the respondent did not consider that the appellant had been affected by the historic injustice affecting Gurkha family members. The appellant appealed to the First-tier Tribunal.

## **First-tier Tribunal decision**

7. The First-tier Judge found the sponsor's evidence to be generally credible: indeed, the Home Office Presenting Officer did not challenge her credibility in cross-examination. The appellant had separated from her husband in 2021 and returned from his house to her mother's house, where she lived alone. The sponsor thereafter sent money, and the appellant also borrowed money against her mother's remittances. There was land, but it produced no income, and the appellant could not find work.
8. The First-tier Judge held that Article 8 was engaged and that family life exists now between appellant and sponsor. However, he did not find the refusal to admit the appellant to be disproportionate:

"3. The sponsor left for the UK in 2011. Her son was here as a student then. There are now three siblings here. It was not clear as to how or on what basis they had come to the UK. The location of the other children was not also clear but the ward chairman's letter said they were in Japan. There was nothing in the witness statements that explained whether there had been a family discussion around coming to the UK during the infancy and minority of the appellant and her siblings (going back to the 1980-90s). This is the crucial question of causation in these cases, particularly when an appellant has married at a young age during this period and started a

separate family. The burden is on the appellant to show that she would have come to the UK, but for the historical injustice, before her eighteenth birthday. For this reason, although there is family life now, I cannot find that the refusal is disproportionate because it is not proven that she has suffered injustice due to the failure to have in place a non-discriminatory policy in the past. Further evidence might establish this issue but there was nothing before me on the point.”

9. The First-tier Judge dismissed the appeal. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

10. Permission to appeal to the Upper Tribunal was granted by DUTJ Monson in the following terms:

“1. While it is doubtful whether, on the facts, the appellant can benefit from the historic injustice principle such that the refusal to allow her to join her mother, a Gurkha widow, in the UK, family life between them having been re-established after a long interval, is ipso facto disproportionate, I consider that the case put forward in the renewed grounds, which is supported by an unreported determination of the UT, merits consideration at an EOL hearing.”

### **Rule 24 Reply**

11. The respondent filed a Rule 24 Reply, the operative part of which is as follows:

“3. Family life between the appellant amounts to accepting that the sponsor has been sending remittances to the appellant since the end of the appellant’s marriage in 2021. The appellant was nearly 40 years old when family life resumed. She had been married since 1995 and had two children, one of whom had died aged 20.

4. It does not appear that respect for the appellant’s recently re-established family life required her admission to the UK and the judge struck a fair balance between the competing interests in this case.”

12. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

13. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. I had access to all of the documents before the First-tier Tribunal.
14. At the beginning of the hearing, Mr McVeety told me that the respondent accepted that the First-tier Judge had made an error of law in his approach to family life and that, family life between sponsor and appellant having been accepted, the appeal should be allowed.

15. The appeal was allowed by consent.

**Notice of Decision**

16. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

**Judith Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 7 October 2024**