



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

Appeal Number: HU/06107/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 April 2018**

**Decision & Reasons Promulgated
On 30 April 2018**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

KAUSHILA SUNUWAR

Appellant

and

ENTRY CLEARANCE OFFICER (NEW DELHI)

Respondent

Representation:

For the appellant: Unrepresented

For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 18 January 2016 to refuse a human rights claim in the context of an application for entry clearance as the dependent adult family member of a former Gurkha.
2. First-tier Tribunal Judge S. Aziz considered the appeal without a hearing. The appeal was dismissed in a decision promulgated on 19 April 2017.

3. It is not necessary to set out the judge's findings in any detail because the respondent accepted that the decision was based on a fundamental error of fact such that it involved the making of an error of law.
4. It is unclear why the First-tier Tribunal seems to have linked three appellants who have no apparent links. The judge determined another appellant's appeal (Purna Devi Sunuwar HU/06103/2016) in the same decision as this appellant. Although they have the same surnames, and it appears that they both have the same legal representative in Kathmandu, there was in fact nothing to connect the two appeals. It is not necessary to go into any detail relating to the third file (Angila Limbu HU/06110/2016) because the appeal was allowed by a different judge and is not the subject of an appeal to the Upper Tribunal.
5. Although the judge might have been misled into thinking that the appeals were linked because the files had been physically linked together, even on a cursory reading of the papers, it becomes apparent that the appellants are not related and that there are no substantive links between the two cases. The fact that the judge thought the two appellants were sisters casts doubt on whether he considered the evidence produced in support of the appeals adequately or at all. The evidence shows that they were relying on relationships with different fathers and were clearly not related. The combination of an apparent error on the part of the First-tier Tribunal in linking two appeals that were unrelated, and the judge's failure to consider the papers in sufficient detail to identify the error, is sufficient to conclude that the decision involved the making of an error of fact that amounts to an error of law.
6. The appropriate course of action is to give instructions to the court administration to separate the files. The appeal will be remitted to the First-tier Tribunal for a fresh decision to be made.

Decision

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The appeal is remitted to the First-tier Tribunal for a fresh decision

Signed  Date 24 April 2018
Upper Tribunal Judge Canavan