



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/06576/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2017**

**Decision & Reasons
Promulgated
On 14 February 2018**

Before

**THE HONOURABLE LORD MATTHEWS
SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE PERKINS**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS YAMUNA PUN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr C Howells (Counsel) instructed by N C Brothers & Co Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State, who we will continue to refer to as the respondent, in the case of Yamuna Pun. She sought entry clearance for settlement as a citizen of Nepal and a member of the family of a former Gurkha soldier who was given indefinite leave to enter the United Kingdom on 5 August 2009.

2. Her leave to enter application was refused by the Entry Clearance Officer in New Delhi but that was appealed to the First-tier Tribunal and her appeal was heard on 20 January 2017, the determination being promulgated on 7 February 2017. The First-tier Tribunal Judge allowed her appeal, finding that the refusal to allow her entry was a breach of the appellant's Article 8 rights. The determination, we think it is fair to say, can be described as brief.
3. The respondent has appealed against that determination on one single ground, namely that the judge failed to have regard to the "public interest considerations" set out in Section 107B of the Nationality, Immigration and Asylum Act 2002. It was argued before us today that that amounted to an error of law. The submission by Mr Nath for the respondent was as commendably brief as the determination, if not more so.
4. In reply Mr Howells, Counsel for the appellant submitted that the grounds of appeal were unarguable in terms of the well-known case of Jitendra Rai v ECO [2017] EWCA Civ 320 and in particular paragraphs 55 to 57 thereof.
5. In our opinion, while the determination of the First-tier Tribunal Judge could have been rather fuller in terms of the assessment of the proportionality balancing exercise, when it is read as a whole it seems to us he has taken account of all that needed to be taken account of. In particular he found at paragraph 29 that the past historic injustice which came into play in this case weighed heavily in the appellant's favour and that the refusal was a disproportionate interference with her right to respect for family life.
6. Jitendra Rai of course is a case on its own facts but nonetheless paragraphs 55-57 dealing with Section 107B seem to us to apply with equal force in the current circumstances. That being so it cannot be said that any error of law is made out in this case and we have no alternative but to dismiss the respondent's appeal.

Notice of Decision

The appeal is dismissed under the Immigration Rules.

No anonymity direction is made.

LORD MATTHEWS
Sitting as an Upper Tribunal Judge
(Immigration and Asylum Chamber)

Date: 12 February November 2017