



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: HU/09796/2019 (V)

**THE IMMIGRATION ACTS**

Heard Remotely at Manchester CJC  
On 16 March 2021

Decision & Reasons Promulgated  
On 24 March 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

YADA PUN

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISION AND REASONS (V)**

For the appellant: Mr D Balroop, instructed by Gordon & Thompson Solicitors

For the Respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I indicated that I found an error of law in the decision but

reserved my full reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Nepal with date of birth given as 23.3.85, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 19.2.20 (Judge Plumtre), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 14.5.19, to refuse her application for entry clearance as the dependent daughter of her father and sponsor, a former Gurkha soldier present and settled in the UK since 2010.
2. The grounds of appeal to the Upper Tribunal asserted that the judge erred in law as follows:
  - a. Making findings contrary to the weight of the evidence. Reliance is particularly placed on:
    - i. The large sums paid by the sponsoring father to the appellant.
    - ii. The appellant's access to the sponsor's bank account, which it is claimed "the pattern of the withdrawal suggests, on the balance that she withdrew large amounts and deposited back when it was not spent".
    - iii. The appellant's mother's long visits to the appellant in 2016 (over 6 months) and 2018/19 (1 year and 2 months).
  - b. Taking into account irrelevant matters, including sums of monies paid to others. It is submitted that this fact does not exclude the appellant being dependent on the sponsor.
3. Permission to appeal was granted by the First-tier Tribunal (Judge Osborne) on 21.5.20, considering the grounds set out above arguable in an "otherwise careful decision." It was considered arguable that the judge failed to give consideration to the large amounts paid to the appellant by the sponsor for her maintenance, and the long visits to the appellant by his mother. Additionally, it was arguable that sums paid by the sponsor to persons other than the appellant are irrelevant. "Furthermore, it is arguable that the deposits paid into the sponsor's bank account by the appellant are in respect of sums not used by the appellant."
4. The Upper Tribunal has received, and I have taken into consideration, the appellant's further submissions, dated 28.8.20, together with the oral submissions made to me at the remote hearing. On 1.10.20, the Upper Tribunal issued directions requiring the respondent to respond to the appellant's further submissions. To date, there has been no such response or Rule 24 reply and Mr Tan did not indicate that there was any such written response.
5. At the outset of the appeal, Mr Tan explained that he did not oppose the appeal. Having read the further submissions, he accepted that material errors were disclosed.

6. In relation to the appellant's asserted access to the sponsor's Nepalese bank account, this is confirmed in principle by the bank in the letter at [41] of the appellant's bundle and [5] of the sponsor's witness statement of 7.12.19. However, as I explained to Mr Balroop, the letter does not state that the appellant is the sole authority holder, as the grounds assert. Further, the assertion in the grounds that "it is more likely than not, on the balance of probabilities in civil standard that the appellant herself withdrew the monies... The pattern of the withdrawal suggests, on the balance that she withdrew large amounts and deposited back when it was not spent," is little more than speculation. There was no evidence indication in the banking evidence carefully considered by the judge as to which withdrawals and in what amounts were withdrawn from the account by the appellant. The sponsor's statement stated only that she withdrew money from the bank account from time to time to "cover her expenses". There is no reference in that statement to monies being paid back into the account by the appellant, or the reason for so doing. In the premises, no error of law is disclosed by the failure to take this assertion into account.
7. However, I am satisfied that the judge failed to take the evidence of financial support fully into account. It is clear from the decision that the judge took into account the sums of monies paid to the appellant by the sponsor but factually erred in stating at [23] of the decision that no payments were made to the appellant during a period between May and July 2017. In fact, as the grounds point out, there were money remittances for considerable sums made in May and June 2017. Similarly, the judge failed to record or acknowledge all of the payments that were made to the appellant. It would have assisted the First-tier Tribunal if a schedule had been prepared setting out the financial payments and remittances in chronological order rather than expecting the judge to detect the information from the appellant's bundle financial documents. However, I am satisfied that the judge failed to properly take into account all of the financial evidence, which undermines the conclusions reached.
8. In addition, it is unclear from [31] of the decision that the judge properly took into account the visits of the appellant's mother to Nepal. Only one of two such visits was there mentioned and when the judge commented that the mother had two part-time jobs in the UK "which precluded long absences," it is not clear what the judge has concluded about the mother's visits.
9. In the circumstances and for the reasons set out above, I find material error of law in the decision of the First-tier Tribunal so that it must be set aside to be remade.
10. Although the further submissions contended for the matter to be remitted to the First-tier Tribunal, Mr Balroop urged me to deal with the appeal on submissions on the issue of dependency in Gurkha-related cases in which the public interest can be outweighed by the historic injustice, provided family life engaging article 8 is established. However, Mr Tan indicated that given the approach taken in the grounds he was not prepared to deal with the matter immediately and pointed to a number of factors identified by the First-tier Tribunal Judge which went against the appellant. In the premises, I concluded that the appropriate course was to remit this

matter to the First-tier Tribunal at Hatton Cross for the decision to be remade de novo.

11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiate all findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal. In all the circumstances, I remit this appeal for a fresh hearing in the First-tier Tribunal, on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

### **Decision**

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The decision in the appeal is remitted to the First-tier Tribunal to be remade de novo with no findings preserved.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 16 March 2021