



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/46972/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7 July 2016

Decision & Reasons Promulgated  
On 13 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MRS BINITA GURUNG  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Colan of Counsel  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought with permission of First-tier Tribunal Judge Ransley from the determination of First-tier Tribunal Judge Pedro which was promulgated on 9 December 2015.

2. The appellant is a citizen of Nepal born in 1987 and she appeals the decision of the respondent to refuse to vary her leave to remain in the United Kingdom. The issue has very much narrowed in the course of argument before me this morning.
3. Under the provisions of the Immigration Rules, appendix FM-SE, it was necessary for the appellant to demonstrate that the required gross annual income of her spouse exceeded the prescribed limit of £18,600. The judge having reviewed the evidence came to the conclusion in paragraph 13 that “the appellant’s spouse’s income fell considerably short of this figure”.
4. The judge correctly looked at this matter using the figures and documentation as at the date of the application as opposed to the date of the hearing. The judge’s determination was sufficient to be dispositive of the appeal in its totality.
5. Rather confusingly, the judge went on to consider the case as at the date of the hearing on the alternative basis that gross annual income level would be £22,400, because by this stage a child had been born. The judge fell into error, however, in not appreciating that the child was a British national and in those circumstances the lower figure would still have prevailed.
6. This error on the judge’s part, however, is not material. The correct finding at paragraph 13 was sufficient to dispose of the matter in its entirety and the subsequent discussion which is found in paragraph 14, though wrong, was not relevant to the outcome.

**Notice of Decision**

**The appellant’s appeal is dismissed and the decision of the First-tier Tribunal Judge is affirmed.**

No anonymity direction is made.

Signed *Mark Hill*

Date 13 July 2016

Deputy Upper Tribunal Judge Hill QC