Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00940/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 December 2017	On 24 January 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

KUL BAHADUR GURUNG
(NO ANONYMITY DIRECTION)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Jaisri, instructed by Sam Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Kul Bahadur Gurung, was born on 19 October 1974 and is a male citizen of Nepal. He applied for entry clearance as the partner of Rita Pun (the sponsor) who has indefinite leave to remain in the United Kingdom. The appellant and sponsor were married on 10 November 2013. The appellant's application was refused by the Entry Clearance Officer (ECO) by a decision dated 10 June 2015. The ECO was not satisfied that

the appellant was in a genuine and subsisting relationship with the sponsor or that they intended to live together permanently in the United Kingdom. The appellant appealed to the First-tier Tribunal (Judge Hosie) which, in a decision promulgated on 7 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The history of the relationship between the appellant and the sponsor is unusual. The couple met in 1996 and they lived together as an unmarried couple between January 1997 and November 2003. During that period, they had two children together. The families of both appellant and sponsor were opposed to the relationship and the couple separated in 2003. The sponsor married another man and travelled to the United Kingdom to settle with him. That relationship then broke down and the sponsor returned to a relationship with the appellant. The sponsor and the appellant married in Nepal in 2013 following the sponsor's divorce.

3. I find that the First-tier Tribunal's decision should be set aside. I have reached that decision for the following reasons. First, I find that the judge has misunderstood the evidence. At [23], the judge wrote:

> The document at A35 does not match with Miss Pun's explanation. She claims that the birth certificate was lost and that she sought a replacement in 2015, that an unauthenticated certificate was produced and that she had to seek validation of the certificate from the SMO. She stated that the validated certificate was produced in 2016. She was unable to explain when asked why the birth certificate at A35 is dated 6 November 2006 or why it was lost as claimed. Nor was this information provided by the appellant. She stated that there should have been a new one issued in 2016 and that it was her husband who had attained it and not her. The appellant has provided no explanation for this anomaly.

4. Mr Jaisri told me that it had been made clear at the First-tier Tribunal hearing (he had been the Counsel before the First-tier Tribunal also) that the document at A35 is a translation of a photocopy of the original certificate which is dated 2006. The appellant subsequently lost the original certificate but the photocopy survived and had been translated. The appellant had sought a replacement certificate (A34) from the Nepalese authorities. The judge's observations at [23] are not at all clear as it does appear that he has overlooked the fact that the document at A35 was a photocopy of a lost original certificate and was not a replacement original from 2016. The judge had already recorded the evidence of the sponsor at [19] that the children's birth had been registered after the relationship between the appellant and sponsor had broken down in 2003. That would appear to explain the 2006 date on the birth certificate. Whilst I accept that neither the reasoning of the decision nor the evidence itself is entirely straightforward, I am satisfied that the judge has misunderstood the explanation provided by the sponsor. As to the reason why the original certificate was lost, it is clear from the evidence given to the Tribunal [19] that the children were living with the appellant after the relationship had broken down and that, in consequence, the sponsor was unaware of the circumstances in which the

certificate had been lost. It was not clear why the judge has held that explanation against the sponsor.

5. Secondly, the judge has failed to deal with all the evidence. As the judge indicates at [27], he had before him a letter from the appellant's "claimed mother-in-law" which indicates *inter alia* that the mother-in-law now gave her consent to the relationship. The judge has not made any findings as to that evidence but has instead gone on [27] to criticise the sponsor for failing to obtain written evidence in support of the appeal from her own parents. I find that the judge has fallen into error. He should have made a clear finding as to whether or not he accepted the evidence from the mother-in-law and what weight he attached to that evidence. Likewise, it was harsh of the judge to find that the appellant's credibility was diminished by the sponsor's failure to obtain evidence from her own parents. I accept that it was possible for this evidence to be obtained but the judge would have been better advised to analyse and make clear findings on the evidence before him rather than to attach significance to evidence which was not.

6. Finally, as regards the marriage of the appellant and sponsor, I find that the judge's findings are not clear. It seems that the judge did accept that there is a difference between a marriage and a subsisting relationship; he refers to *GA Ghana* [2006] UKAIT 00046 at [30]) but he states at [31], "even if I were to accept that there is a valid marriage, I do not accept that it is genuine or subsisting". That statement is odd given that the validity of the marriage itself was not disputed by the ECO. If the judge had wished to reject the validity of the marriage, then he should have given clear reasons for doing so. His statement at [31] appears to suggest that he had not accepted that the marriage was valid notwithstanding the ECO's concession that it was.

7. I find that the judge has, as indicated above, misunderstood the evidence whilst the remainder of his decision is insufficiently cogent to stand. I set it aside. I set aside the findings of fact. There will need to be a new fact-finding exercise before a fresh panel of the First-tier Tribunal to which this appeal is now returned.

Notice of Decision

8. The decision of the First-tier Tribunal promulgated on 7 March 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Hosie) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed Date 20 January 2018

Upper Tribunal Judge Lane