



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02586/2015**

THE IMMIGRATION ACTS

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

**Decision & Reasons
Promulgated
On 11 January 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**CHANDRA BAHADUR GURUNG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss O'Callaghan, instructed by N C Brothers & Co Solicitors

For the Respondent: Mrs Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Chandra Bahadur Gurung, was born on 2 July 1984 and is a male citizen of Nepal. The appellant's parents (his father is a former Gurkha) came to the United Kingdom to live when the appellant was about 25 years old. He is now aged 32 years. He applied for settlement in the United Kingdom with his parents but this was refused by a decision of the Secretary of State dated 16 July 2015. The appellant appealed against that decision of the First-tier Tribunal (Judge Parkes) which, in a decision

which was promulgated on 14 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the hearing at Field House on 28 November 2017, Mrs Fijiwala, who appeared for the Secretary of State, conceded that the decision of the First-tier Tribunal was vitiated by error of law. The judge had failed to adopt a structured approach to the evidence when deciding whether or not there existed family life for the purposes of Article 8 ECHR between the appellant and his parents in the United Kingdom. The grant of permission complains that the judge failed to engaged with the case of *Rai* [2017] EWCA Civ 320 although that is somewhat unfair to the judge given that that judgment in the Court of Appeal was not promulgated until 28 April 2017, more than a month after the First-tier Tribunal decision. Having said that, many of the issues discussed by the Court of Appeal in *Rai* are relevant in the instant case and, insofar as the Court of Appeal decision was a clarification of the existing law, it appears that Judge Parkes erred in his assessment of family life.
3. No interpreter was available before the Upper Tribunal and there will need to be a further fact-finding exercise which is best conducted before the First-tier Tribunal to which this appeal is now remitted.

Notice of Decision

4. The decision of the First-tier Tribunal which was promulgated on 14 March 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Parkes) for that Tribunal to remake the decision.
5. No anonymity direction is made.

Signed

Date 3 January 2018

Upper Tribunal Judge Lane