



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/13522/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 August 2020**

**Decision & Reasons Promulgated  
On 26 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**GYANU MAYA SHERCHAN  
[NO ANONYMITY ORDER]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Decision and reasons**

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision on 24 July 2019 to refuse her indefinite leave to remain on the basis of 10 years' lawful residence. The appellant is a citizen of Nepal.

**Background**

2. The appellant came to the United Kingdom in June 2008. She was 27 years old and had Tier 4 entry clearance as a student. The respondent accepted that she had valid leave from 27 June 2008 to 5 April 2017, which is less

than 10 years. On 5 April 2017, further leave was refused with an out of country right of appeal.

3. The appellant has studied successfully in the United Kingdom. She has completed a Master of Arts in Marketing and Innovation from Anglia Ruskin University.
4. The appellant's parents remain in Nepal. One of her brothers lives in Japan and the other is here, with his family. She has lived with that brother, his wife and their young children since coming to the United Kingdom to study in 2008. The appellant has never made any claim for international protection. The present claim sounds in human rights alone.
5. The appellant has extensive body scarring, on her leg and back, said to have been caused by an attack on her by her paternal uncle in December 1995, when she was 14 years old. The uncle was given to aggression when drunk: he pushed her into a fire during dinner. No medical evidence was produced to assist the judge in assessing whether the burns were caused as claimed. The appellant contended that she continued to fear her uncle in Nepal and that she was ashamed of her appearance, which would make it difficult for her to reintegrate in Nepal if she were returned there.
6. The applicant made a judicial review application which does not attract a section 3C continuation of the existing leave. She cannot, therefore, meet the long residence requirements of the Rules. Following the judicial review claim, an in-country right of appeal was granted.

### **Respondent's decision**

7. The respondent rejected the applicant's claim for leave to remain outside the Rules, because she considered that the appellant had not shown exceptional or compelling circumstances for which leave to remain should be given outside the Rules and that her relationship with her brother and his family could be continued by modern means of communication, from Nepal, after her return.

### **First-tier Tribunal decision**

8. First-tier Judge Kudhail had before her a bundle of documents including some indistinct photographs of the scarring, and witness statements from the appellant's brother and father. The respondent did not arrange representation for the First-tier Tribunal hearing.
9. The First-tier Judge heard oral evidence from the appellant and her brother. Her father, who remains in Nepal, gave evidence by a witness statement.
10. The brother's witness statement says that the appellant helps a lot with the care of his children and receives free accommodation in return. That enables the brother and his wife to work outside the home: he says the children are 'totally dependent emotionally' on the appellant and that they are a family unit.

11. The appellant's uncle, a former Indian army soldier, was said to have been jealous of her father, a successful businessman. He was fired from his army battalion for behavioural issues. He came home to the family and 'started ruling the house': they were all scared of him.
12. On 5 December 1995, when the appellant was 14 years old, during a family meal the uncle pushed her onto the fire. She had to go to hospital because she was badly burned on the hip and leg. All of the children were sent to Kathmandu to study, away from the uncle, who had now taken over their family home. The appellant remained in Kathmandu for almost three years before coming to the United Kingdom to study, and her brother says she has difficulty trusting family members now.
13. The appellant's father gave the same account, and said that he thought the appellant had made social friends, as well as family connections, in the United Kingdom where she was safer and sounder.
14. In oral evidence, the brother said it would be a disaster, given the family history, if his sister went back to Nepal. He wanted her to be safe and happy: he thought of her more as one of his children, rather than a sister, and her care of the children of himself and his wife was essential to them.
15. The evidence of the appellant, her brother and her father stands unchallenged, since the respondent did not attend the First-tier Tribunal hearing, and must therefore be treated as credible.

### **Permission to appeal**

16. Permission to appeal was granted by First-tier Judge Povey on the basis of arguable irrationality and/or inadequacy of reasoning in the First-tier Judge's decision.

### **Rule 24 Reply**

17. There was no Rule 24 reply on behalf of the respondent.

### **Further submissions on behalf of the appellant**

18. On 17 June 2020, triage directions were sent to both parties. The appellant's solicitors responded, stating that they considered the case to be so clear that no further oral hearing is necessary, and making submissions for consideration in a paper remaking of the decision.
19. The submissions, which are concise, repeat the assertion that the First-tier Judge's decision lacks reasoning on the body shame and social anxiety issues.
20. The respondent did not reply to that response and I assume therefore, that she has nothing, or nothing further, to add. I therefore proceed to consider this appeal on the documents before me.

21. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

22. I consider this appeal without a hearing, following the appellant's solicitors' indication that they have no objection to that approach. It is right, I consider, that the First-tier Judge erred in the treatment of the brother's evidence about the cause of the body scars in the photographs. There was no cross-examination and no reason to disbelieve his evidence.

23. Her uncle did not follow her there, as the appellant asserted that he would (see [22] in the First-tier Judge's decision, where her oral evidence is set out).

24. The brother's evidence is accurately recorded at [24]-[26] of the First-tier Judge's decision.

### **Analysis**

25. However, I remind myself that there was no asylum claim before the First-tier Judge and that the appellant apparently studied in Kathmandu for a number of years before coming to the United Kingdom, without the uncle causing her further difficulty. The incident relied upon occurred in December 1995, almost 25 years ago. The appellant is an adult woman now 39 years old. She did not leave Nepal until 2008, 13 years after the index event. The First-tier Judge did not err in considering that there was no real risk from the uncle now.

26. The First-tier Judge's consideration of the question of private and family life is also properly reasoned and sound.

27. The conclusions reached by the judge are supported by proper, intelligible and adequate reasoning and I decline to reopen them. These grounds of appeal and the later submissions, together with the evidence before the First-tier Judge, disclose no material error of law therein.

### **DECISION**

28. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 25 August 2020