



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14092/2019**

THE IMMIGRATION ACTS

**Heard remotely via Teams
On 26 May 2021**

**Decision & Reasons Promulgated
On 27 May 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**UBARAQ RAI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer

For the Respondent: Mr Moriarty

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1984 and is a male citizen of Nepal. He appealed to the First-tier Tribunal against a decision of the respondent dated 10 July 2019 refusing him entry clearance as the dependant child of his mother, Mrs Parbai Rai (hereafter 'the sponsor'). The First-tier Tribunal, in a decision promulgated on 3 February 2021, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing in the Upper Tribunal on 26 May 2021, Mr Moriarty, who appeared for the appellant, told me that the appellant accepts that

the First-tier Tribunal erred in law such that its decision should be set aside. The appellant acknowledges that the judge had assessed the credibility of the evidence without reference to a previous decision of the First-tier Tribunal dated 27 October 2016 AND contrary to the principles set out in *Devasseelan* [2002] UKIAT 00702*.

3. I am grateful to both advocates for their helpful approach to the appeal and for their submissions regarding disposal. The appeal has had a lengthy litigation history but I am not satisfied that it would be appropriate to determine the appeal by way of a resumed hearing in the Upper Tribunal. Whilst it is the case that one of the main credibility findings which the Tribunal made in 2016 (that the appellant had relied on false evidence of employment) is now accepted by both parties, there remain other findings from 2016 which should be considered as part of a holistic assessment of all the evidence; in my opinion, justice will be most readily achieved by a *de novo* consideration of the evidence. That consideration will be most effectively carried out in the First-tier Tribunal to which the appeal is now returned for the decision to be remade.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Signed
Upper Tribunal Judge Lane

Date 26 May 2021

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.