



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Ce-File Number: UI-2022-004801
First-tier Tribunal No: HU/54855/2021
IA/12147/2021**

THE IMMIGRATION ACTS

**Heard at Field House IAC
On the 13 January 2023**

**Decision & Reasons Promulgated
On the 10 March 2023**

Before

**Upper Tribunal Judge RIMINGTON
Deputy Upper Tribunal Judge MANUELL**

Between

**Mr LOHANG SHERPA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Mr T Melvin, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Kelly on 26 September 2022 against the decision of First-tier Tribunal Judge Louveaux who had dismissed the appeal of the Appellant seeking entry clearance to settle in the United Kingdom as the dependent of his father, a former soldier in the Brigade of Gurkhas. The appeal was on Article 8 ECHR human rights grounds only. The decision and reasons was promulgated on 28 April 2022.
2. The Appellant is a national of Nepal, born on 19 November 1983. His appeal to the First-tier Tribunal was linked with that of his older brother, Mr Sange Sherpa, born on 11 March 1973. The appeals were heard together in the First-tier Tribunal. The decision of Judge Louveaux dismissed both brothers' appeals. Only the appeal in Lohang Sherpa was before us.
3. By a Rule 24 notice dated 6 October 2022, in fact addressing the appeals of both brothers, the Respondent had conceded that there had been a material error of law and requested that the decision of Judge Louveaux be set aside and the appeals be remitted. We note the Respondent's concession in her Rule 24 notice. We accordingly find by concession of Secretary of State for the Home Department that the decision of Judge Louveaux is vitiated by material error of law in relation to the appellant before us. Specifically, those material error of laws were (a) failure to closely examine the impact of the provision of financial support by the sponsor on the existence of family life and (b) adopting too stringent an approach to the provision of support, inferring that it had to be of necessity rather than choice.
4. Unfortunately, it seems due to IT systems' problems, the appeals of the Appellant and his brother became separated when they reached the Upper Tribunal for listing after permission to appeal had been granted. Rather than remaining linked as they so obviously should have been, the appeal of Mr Sange Sherpa was listed before Upper Tribunal Stephen Smith and Deputy Upper Tribunal Judge Haria. That appeal was heard on 11 January 2023. Upper Tribunal Stephen Smith and Deputy Upper Tribunal Judge Haria's decision was promulgated on 13 January 2023. It also found that there was material error of law such that Judge Louveaux's decision should be set aside. Mr Sange Sherpa's appeal was allowed and remitted to the First-

tier Tribunal for rehearing by another First-tier Tribunal Judge.

5. Perhaps aware that the Respondent by a Rule 24 notice dated had similarly conceded that there had been a material error of law in the present appeal, there was no appearance on behalf of the Appellant. We have to say that this was not in our view the correct approach, particularly when it must have been obvious that there had been a listing error. At the least the Upper Tribunal should have been notified of the Appellant's position and an explanation provided.
6. Further findings of fact will be needed in order for this appeal to be properly decided. The decision so far as it concerns the Appellant is set aside with no preserved findings of fact. The onwards appeal is allowed. The original decision and reasons is set aside, to be remade in the First-tier Tribunal.

DECISION

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

The appeal is to be reheard in the First-tier Tribunal by any First-tier Tribunal Judge apart from Judge Louveaux.

We direct that this appeal shall again be linked with the appeal of Mr Sange Sherpa, UI-2022-004756 (HU/54856/2021), and heard and determined with that other appeal.

Signed R J Manuell Dated 16 January 2023

Deputy Upper Tribunal Judge Manuell