



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

Appeal Number: HU/09753/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21 June 2019**

**Decision & Reasons Promulgated
On 2 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR LALIT GURUNG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms McCarthy of Counsel, Everest Law Solicitors

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nepal. He was born on 8 September 1991.
2. He appealed against the respondent's decision to refuse leave to enter dated 14 March 2018.
3. The appeal was dismissed by Judge Eldridge (the judge) in a decision promulgated on 27 January 2019. There had been a previous application and previous dismissal of an appeal which had not been overturned. The judge took account of the facts found in terms of **Devaseelan**; the basis of the dependency claim was not made out and the judge found similarly

as Judge Keith. The judge did not accept that there was family life between the appellant and his mother such as would engage Article 8.

4. The grounds were dated 18 February 2019. They claim the following errors of law:

- (i) Evidence of real, committed support from mother to son.
- (ii) Failure to consider mother's family life with the appellant and apply **Beoku-Betts**.
- (iii) Failure to consider other factors indicating engagement of Article 8.

5. Judge Murray refused permission in a decision dated 1 April 2019. She said inter alia as follows:

"2. The grounds assert that the judge erred in failing adequately to consider the existence of family life between the appellant and his mother, the widow of a Ghurkha. It is argued that the judge failed to adequately consider the factors engaging the operation of Article 8(1).

3. There is no arguable error of law in the decision of the First-tier Tribunal. The judge set out the relevant law, made findings of fact that were open to him on the evidence and applied the law to the facts. The finding that there was no family life between the adult appellant and his mother took all material factors into account and was adequately reasoned."

6. The grounds were renewed to the Upper Tribunal. The main thrust was that in refusing permission, Judge Murray *'.....has not examined the substance of the grounds.'* The grounds were repeated in substance, however, the following points were made:

- (a) This was a compelling Ghurkha case in which had the appellant's widowed mother had the financial resources and legal assistance to apply for the appellant at the same time as she herself applied in 2009, the appellant would have qualified outright under the policy for minor dependants. The appellant is still a young man of only 27 years.
- (b) The judge failed to consider the new evidence (that is, the evidence subsequent to the decision of Judge Keith which was not appealed), that the money the appellant's mother had previously been sending to him had sometimes been wired to the appellant by a relative. That relative attended court to give evidence. There was no reason to doubt his evidence. The explanation clarified the main previous problems in the appellant's mother's evidence on the basis of which Judge Keith had doubted her credibility during the 2015 appeal. The new evidence showed that far from being an evasive witness, the appellant's mother was an unsophisticated witness who had simply failed to explain the arrangement clearly in the previous appeal.

- (c) Having accepted that the appellant's mother was providing "committed support" or "effective support" to the appellant in the regular remittances, the judge failed to apply the case law on the engagement of Article 8 in **Kugathas [2003] EWCA Civ 311**.

Submissions on Error of Law

7. Ms McCarthy submitted that it might have been that the judge misunderstood the evidence. The appellant's mother is a widow, his Ghurkha father having died, such that he did not come within Annex K. It appeared the judge did not understand the nature of the family relationships. See [30] where the judge considered the decision of Judge Keith in terms of **Devaseelan**. There was no slip in description except that the bank transfer was made by the appellant's mother's "son-in-law, the husband of her daughter Sunita". See page 5 at [15] of the appellant's bundle for an explanation of the family relationships.
8. There was no Rule 24 response. Mr Whitwell submitted that the grounds raised issues of perversity in terms of error of law. The judge had to take the findings of Judge Keith as his starting point.

Conclusion on Error of Law

9. The judge did not find family life was engaged within the terms of Article 8(1).
10. The judge accepted that the appellant's mother had made a number of visits to Nepal and that although she had a large family, the visits would include the appellant. The judge also accepted that the appellant was receiving some maintenance from his mother. He drew an adverse inference at [38] because there was no suggestion that the appellant is unable to work and because it was "unhelpful" that the appellant's own up-to-date financial position, as evidenced by bank statements had not been produced. To engage Article 8(1) the appellant did not need to show dependence of necessity but rather committed support. The judge might have been misled at [30] by Judge Keith's previous finding that there was evidence of funding from the appellant's "son in law". The evidence which had been clarified before the judge was that funding was from the appellant's mother but transferred via her son in law, her daughter's husband. The appellant's mother had shown committed support, by visits and sending money channelled via a close family member.
11. I find the judge erred because family life was engaged. It is a low threshold. See **Ghising (Ghurkhas/BOCs; historic wrong; weight) Nepal [2013] UKUT 567**.

Notice of Decision

The judge materially erred. The decision is set aside. The appeal will be remitted to the First-tier for a de novo hearing.

No anonymity direction is made.

Signed

Date 27 June 2019

Deputy Upper Tribunal Judge Peart