



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24864/2018 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34 of the Tribunal
Procedure
(Upper Tribunal) Rules 2008
On 21 May 2020**

**Decision & Reasons
Promulgated
On 27 May 2020**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

**JAGAT GURUNG
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant, a citizen of Nepal, appeals against the decision of First-tier Tribunal Judge Devittie who, following a hearing at Taylor House on 27 August 2019, dismissed the appellant's appeal against the refusal by the respondent of the appellant's human rights claim.
2. The appellant sought entry clearance to the United Kingdom as the dependant of the widow of a former Gurkha soldier. The appellant's father had retired from the British Army before the appellant's birth. The appellant's parents subsequently travelled to the United Kingdom and obtained settlement there. The appellant's older sister and younger brother were also able to gain settlement in the United Kingdom. The appellant, however, remained in Nepal.

3. After his father's death, the appellant received visits each year from his mother. The appellant has two children of his own, who live with him and his partner in the former family home.
4. Having heard evidence from the appellant's mother, the First-tier Tribunal Judge concluded that the evidence, taken as a whole, did not establish that there was a real, committed and effective system of support between the appellant and the sponsor or that the appellant enjoyed a family life, protected by Article 8, with the sponsor. In particular, the judge noted that the appellant, aged 39, had a partner and two children, with whom he lived in Nepal. The appellant had, according to the judge, set up an independent family unit with his partner and children. It was not material that the appellant received financial support from his mother and family in the United Kingdom. It was not uncommon for persons settled in the United Kingdom to send financial support to their family members.
5. The judge further found that the appellant had established his independent family unit, at the time that his mother left for the United Kingdom. The judge did not consider that "considerations of historic injustice weigh in the appellant's favour in the assessment of whether family life has been established". The judge considered that the appellant "comes from a distinguished family of Gurkha soldiers who have served the British Crown with distinction and loyalty". In this regard, the judge gave consideration to evidence given at the hearing by the appellant's brother.
6. In his grounds of appeal to the Upper Tribunal, Mr West of Counsel submitted that it was simply perverse of the First-tier Tribunal Judge to state that the issue of whether the appellant received financial support from his mother was not material for the purpose of establishing whether there was an Article 8 family life between them, pursuant to the guidance on this issue contained in the judgments of Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 and Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160. Financial dependency was, Mr West submitted, a factor that was highly relevant to the sensitive assessment of dependency for Article 8 purposes.
7. Mr West criticised the First-tier Tribunal Judge for giving no reason for his finding that the appellant enjoyed an independent life at the time that his mother had come to the United Kingdom. In any event, at that time, the appellant had been living with his wife but also with his parents, in the same home, for some years. The question, accordingly, was whether the asserted family life existed at the time of his parents' departure and had endured beyond it: Jitendra Rai v Entry Clearance Officer, New Delhi [2017] EWCA Civ 320. The grounds submitted that it was difficult to see how the judge could have found the appellant was living an "independent life" when he simply remained in the same family home, with his wife, as an unemployed person, relying upon financial support from his mother in the United Kingdom, as well as his father's pension. All of this was

“exactly the same situation as at the time when his parents left to come to the UK in 2005”.

8. The grounds further contended that the First-tier Tribunal Judge had erred in failing to make any findings upon the evidence of visits and communication between the appellant and his mother. Emotional dependency was “a crucial factor in the assessment of whether family life exists under Article 8(1)”. Substantial evidence as to contact via messaging and calls had been put before the judge; but no findings were made on this issue.
9. The First-tier Tribunal granted permission to appeal to the Upper Tribunal on 10 February 2020. The First-tier Tribunal Judge who granted permission was concerned to highlight the ground of challenge regarding the appellant having remained, essentially in the same position, both physically and financially, after his family left Nepal, as he had been, when living with them in the family home there.
10. The Upper Tribunal hearing was listed for Monday 23 March 2020. Because of the Covid-19 pandemic, that hearing was cancelled.
11. Having reviewed the case, I reached a provisional view, in the light of the pandemic and in accordance with the overriding objective, that it would be appropriate in this case to determine, without a hearing, whether the First-tier Tribunal’s decision involved the making of an error of law; and, if so, whether the decision of the First-tier Tribunal should be set aside. In so doing, I stated that I had taken into account the grounds drafted by Mr West. I stated that there was, as matters stood, a strong case that the First-tier Tribunal failed to give adequate reasons for its findings and that the case should be remitted. My Note and Directions were sent to the parties on 24 April 2020. The directions provided for the appellant to make further submissions, if so advised; likewise, the respondent.
12. No such submissions were received from the appellant or his representatives, Everest Law Solicitors. However, by letter dated 7 May 2020, Mr McVeety, a Senior Presenting Officer, informed the Upper Tribunal that the respondent “accepts that the decision of the First-tier Tribunal is materially flawed for the reasons identified in the appellant’s grounds of appeal and therefore accepts that the decision of the First-tier Tribunal should be set aside in its entirety”. It was stated that the respondent “would be content for any re-hearing to take place in either the First-tier or the Upper Tribunal”.
13. In all the circumstances, I consider that the errors identified by the appellant’s Counsel are such as to constitute errors of law, for the reasons advanced. I further consider that, as a result of those errors, an entirely fresh fact-finding exercise is necessary to be undertaken. In those circumstances, I consider that the appropriate course is for this matter to be remitted to the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal contains errors of law. I set the decision aside. I remit the matter to the First-tier Tribunal.

No anonymity direction is made.

Signed

Mr Justice Lane

Dated: 21 May 2020

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber