



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

Appeal Number: HU/25053/2018

THE IMMIGRATION ACTS

**Heard at Field House via Skype for Decision & Reasons
Business Promulgated
On 8 January 2021 On 4 February 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**SHOVA THAPA MAGAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, instructed by Arkas Law

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nepal. She appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 26 November 2018 refusing her application for entry clearance to join her father, the sponsor, and her mother, the second sponsor, as their adult dependent child. The judge dismissed her appeal in a decision promulgated on 6 September 2019. The appellant subsequently sought and was granted permission to appeal against the judge's decision. In a Rule 24 response

of 1 October 2020 the respondent did not oppose the appellant's application for permission to appeal and invited the Tribunal to determine the appeal at a fresh oral hearing to consider whether the appellant should be granted entry clearance as the adult dependent child of the UK-based sponsor.

2. Although Mr Balroop had not seen the Rule 24 response he had spoken to Mr Tufan about it and noted that the Secretary of State had accepted that there was an error of law in the judge's decision. He observed that there were positive findings for example with regard to remittances. The judge had erred in his conclusions as to family life and also as to proportionality. He did not think that further evidence was needed from the sponsor and accordingly it was agreed that it would be appropriate to proceed to remake the decision on the basis of submissions today.
3. Mr Balroop rehearsed the brief history of the application. The appellant had applied for entry clearance in September 2018. Her father was a former Gurkha. He had died in 2018 during the course of the appeal. There were positive findings at paragraph 35 of the judge's decision where he accepted that remittances had been made and financial support provided from the appellant's mother to the appellant. Her mother had come to the United Kingdom with her father in 2016.
4. The couple had five children and all were married except for the appellant and the brother who had come with his parents to the United Kingdom in 2016. The appellant was the last child in the family home. She was single and unemployed. She relied on the money sent to her from the United Kingdom and access to her father's pension, while she was in Nepal on her own.
5. In the grounds, which had been settled by Mr Balroop, emphasis was placed on the decision of the Court of Appeal in Rai [2017] EWCA Civ 320, in particular on what had been said at paragraph 17 concerning the relevant legal principles. The test for finding family life under Article 8(1) was effective support and that could be lower than dependency. It was a modest threshold. If the money being sent was for the appellant's support then that met the threshold and Article 8 was engaged with respect to family life.
6. There was also reference, at paragraph 35 in Rai, to emotional support. That was not needed. It was not a high threshold to require emotional support, given that the appellant had lived with her parents until they came to the United Kingdom in July 2016. There was constant communication and emotional support could be counted. Her father had died during the period of the application/appeal. On the balance of probabilities she would require some support from her mother during this time. She had not been able to see her father or attend his funeral and that could engage Article 8. In light of the acceptance by Mr Tufan that

Article 8(2) would be breached if Article 8(1) was engaged, the appeal should be allowed.

7. In his submissions Mr Tufan confirmed a point that had emerged from discussion at the outset of the hearing that he accepted that Article 8(2) would be engaged if Article 8(1) was. But, he argued, family life was not made out in this case. He referred to the decision of the Court of Appeal in AAO [2011] EWCA Civ 840 at paragraph 35. He did not agree that Article 8 was engaged in this case. The judge had found that there was not an emotional dependency and that was the issue. Financial support in this case did not engage Article 8(1). It was clear from what the judge had found at paragraph 34 of his decision that the appellant was not in need of emotional support at her age and in any event the normal emotional dependency between an elderly parent and a child aged 34 in the absence of some additional dependency in respect of health-related issues did not establish family life. The appeal should be dismissed.
8. I reserved my decision.
9. The judge noted that there was no evidence before him about the physical and mental health of the appellant and therefore assumed she was fit and well both physically and mentally. There was no medical evidence concerning her mental and physical health and therefore he found, as I find he was entitled to, that she is in good physical and mental health.
10. The judge went on then to consider the appellant's claim to be in need of emotional support from her mother, the second sponsor. He bore in mind that she is a physically and mentally fit and well young woman aged 34 whose mother was 63 at the date of the decision. He observed that the appellant has two sisters and a brother living in Nepal and commented that there was no reason why she could not access any emotional support needed from them. He did not accept that she was in need of emotional support at the age of 34 and asked himself why the appellant could not access that from her siblings living near her in Nepal and considered that in any event any normal emotional dependency between an elderly parent and a child aged 34 in the absence of some additional dependency in respect of health-related issues such as disability or problems with managing herself on a daily basis did not establish family life for the purposes of Article 8.
11. As regards financial support, the judge noted that there were some money transfer documents in the bundle which confirmed that the appellant was receiving remittances from her father. Her evidence as set out in her witness statement was that her mother pays for all her food, clothes, shopping and all other expenses in Nepal and that she has no other means of support. The support was provided by her father when he was alive. As her father was diagnosed with kidney failure neither he nor her mother could visit her between 2016 and 2018 but her brother Manoj visited her in Nepal she said "almost three times" since moving to the United Kingdom

in 2016 and her mother visited her for a month in January 2019. She said that her siblings in Nepal were independent or married with children and live in their own houses which are far from hers.

12. In her witness statement the appellant's mother said that the appellant is fully financially and emotionally dependent on her. The appellant, she said, was only educated up to secondary level in Nepal and could not study beyond this and had to give up her education as their financial situation was not good and, given her lack of higher education and qualifications, it was not possible for her to get a job in a country like Nepal. The British Army pension had only been enough to cover basic living expenses in Nepal for the family. She said that her daughter called her all the time if any decision needed to be taken and consulted her on all matters relating to her life. She says that she is the only source of income for her daughter and there is no-one in Nepal to whom she could turn for support in a crisis.
13. The judge, therefore, did not accept that there was emotional dependency between the appellant and her mother but accepted that there was financial support provided.
14. In Rai the Court of Appeal discussed the relevant principles with regard to the engagement of Article 8.
15. At paragraph 17 it quoted from the judgment of the Court of Appeal in Kugathas [2003] EWCA Civ 31 concluding from the judgment of Sedley LJ that if one adds the words "real" or "committed" or "effective" to the word "support", then it represents an irreducible minimum of what family life implies. Arden LJ referred to the need to identify who are the near relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom she has resided in the past, and the forms of contact she has maintained with the other members of the family with whom he claims to have a family life. There was no presumption of family life. Family life was not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties. Such ties might exist if the appellant were dependent on his family or vice versa but it was not essential that the members of the family should be in the same country.
16. It was emphasised at paragraph 19 in Rai that ultimately the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case, quoting from what was said by Lord Dyson MR in Gurung [2013] 1 WLR 2546.
17. It is also relevant to quote from what was said by Sir Stanley Burnton in Singh [2015] EWCA Civ 630 at paragraph 24 that the love and affection between an adult and his parents or siblings will not of itself justify a finding of family life and there has to be something more.

18. In this case I consider it has been established that that something more has been shown. I accept from the evidence provided in some detail in the appellant and her mother's witness statements that the appellant is essentially living an isolated existence in Nepal and is emotionally dependent on her mother to a significant extent for support, advice and help. In addition, she is entirely financially dependent on her mother for remittances she receives from the United Kingdom. In the circumstances, I find that there is family life between the appellant and her mother in the particular circumstances of this case, and, in light of Mr Tufan's very proper acceptance that if Article 8(1) was engaged, then in effect that would be the end of the matter since Article 8(2) could not be made out by the Secretary of State, in other words, there was family life and it could not be shown that the interference with that family life was proportionate in the case. As a consequence, this appeal is allowed.

Notice of Decision

The appeal is allowed on human rights grounds.

No anonymity direction is made.



Signed

Date 20 January 2021

Upper Tribunal Judge Allen