



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

Appeal Number: HU/02600/2020

THE IMMIGRATION ACTS

**Heard at Bradford (via Microsoft
Teams)
On 20 August 2021**

**Decision promulgated
On 14 September 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RUMA RAI

(Anonymity direction not made)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Wilford instructed by Everest Law Solicitors.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision promulgated on 5 March 2021 First-tier Tribunal Judge Swinnerton ('the Judge) dismissed the appellant's appeal against the refusal by an Entry Clearance Officer (ECO) on 9 November 2019 of her application for entry clearance as an adult dependent child of her mother and sponsor, the widow of a former Gurkha soldier.

2. The Judge having considered the documentary and oral evidence sets out the findings of fact from [23] of the decision under challenge.
3. At [26] the Judge sets out the documentary evidence provided, but only makes reference to Standard Chartered Bank statements for the sponsor's account from 1 March 2019 to 30 September 2019.
4. At [29 - 30] the Judge writes:
 - "29. Based on the evidence of Ms Rai at the hearing, it appears that the Appellant has not been included in her bank account. There is, in any event, no documentation from the Standard Chartered Bank in the form of a bank statement, letter or otherwise to that effect. In light also of the far from clear evidence of Mr Rai on this point, I find it more likely than not that the Appellant has not been added to the Standard Chartered Bank account of her mother in Nepal.
 30. Ms Rai also gave evidence to the effect that her daughter had use of the ATM card to her Standard Chartered Bank account in Nepal and was able to use the ATM card to withdraw monies from her mother's bank account. I was not provided with a recent bank statement demonstrated that the bank account of Ms Rai had been accessed recently and that monies withdrawn. I was not, therefore, provided with any documentary evidence to demonstrate that the Appellant receives any financial assistance from her mother. In summary, on this point, I find it more likely than not that the Appellant does not receive financial assistance from her mother."
5. The Judge concludes on the evidence that she was not satisfied that family life between the appellant and her mother, her sponsor, existed and that Article 8(1) ECHR was not engaged.
6. The appellant sought permission to appeal on five grounds, but I only need refer to Ground 3 in which it is pleaded:

"Ground 3: Failure to take account evidence of financial support

 8. Judge Swinnerton gave permission to the Appellant to serve post hearing evidence in the form of bank statements '*by midnight*' and confirmed that these should be sent via his clerk's email address: []. The hearing was started shortly after 2 PM and finished just before 4 PM. The Appellant's solicitor served the bank statements on the Tribunal via an email sent to that address at 7:32 PM on 2 March 2021 (see attached). The determination was promulgated on 5 March 2021. The attached bank statements demonstrate that the Appellant and her mother (the Sponsor) held a Joint Account with the Standard Chartered Bank. These statements recorded the following cash withdrawals from that account in the Appellant's name:
 - (1) 9.2.20 400,000 NPR
 - (2) 15.6.20 120,000 NPR
 - (3) 16.8.20 45,000 NPR
 - (4) 15.10.20 45,000 NPR
 - (5) 23.11.20 40,000 NPR

9. In spite of the above, these statements were evidently not considered by FTTJ Swinnerton and he concludes, *'I find it more likely than not that the Appellant has not been added to the Standard Chartered Bank Account'* (see [29], p5 of the determination) and *'I find it more likely than not that the Appellant does not receive financial assistance from her mother'* (at [30], p5 of the determination).
10. FTTJ Swinnerton appears unaware of the service of the bank statements. However, that lack of awareness provides no answer to this ground of appeal. Certainly, FTTJ Swinnerton ought to have been aware of the bank statements: the material was served via the medium, and within the deadline, he had himself directed.
11. Certainly, the evidence was material to the only issue before the Tribunal: whether family life existed between the Appellant and her mother, such as to engage Article 8(1). The Strasbourg Court look to *'elements of dependence'* (*A.W.Khan v SSHD Khan v United* (2010) 50 E.H.R.R 47 at [32]. *'Dependence'* means *'real support'*, *'effective support'* or *'committed support'* (per Sedley LJ at [17]). That family life can exist in the presence of *'real'*, *'effective'* or *'committed'* support was confirmed most recently in *Uddin v, Secretary of State the Home Department* [2020] 1 WLR 1562, at [40].
12. The bank statements were clearly demonstrative of the fact that the Sponsor/mother provided the Appellant/daughter with financial support. FTTJ Swinnerton's failure to consider this evidence, therefore amounted to a material error of law."

Error of law

7. It is not disputed the Judge gave the appellant an additional opportunity to produce documents that were not made available at the hearing for the purposes of enabling her to prove her case.
8. It cannot be disputed that those documents, the additional Charter Bank Statements, were sent by email on 2 March 2021 at 7:32 PM to the address stipulated by the Judge.
9. What there is not within the First-tier Tribunal file is any indication that the following day, or any time thereafter, those bank statements were sent to Judge Swinnerton, who is a fee paid Judge of the First-tier Tribunal.
10. It appears that as a result of this error when Judge Swinnerton came to write her determination and send the same through the promulgation she did not have the benefit of considering the additional bank statements.
11. Mr Bates accepted that this amounted to a procedural error.
12. I find **through no fault of the Judge** who would have been unaware that the documents she requested and gave additional time to be filed had been sent to the email address of her clerk, that a procedural irregularity is made out sufficient to amount to a material error of law.
13. The appeal shall be remitted to Hatton Cross to be considered afresh by a judge other than Judge Swinnerton. There shall be no preserved findings.

Decision

14. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Hatton Cross to be heard afresh by a judge other than Judge Swinnerton.

Anonymity.

15. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 23 August 2021