



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/15499/2010

THE IMMIGRATION ACTS

Heard at Bradford
On 7 January 2014

Determination Promulgated
On 24 February 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANJU GURUNG

Respondent

Representation:

For the Appellant: Mrs R Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Mr R Worthington, Parker Rhodes Hickmotts, Solicitors

DETERMINATION AND REASONS

1. The respondent, Manju Gurung, claims to be a citizen of Bhutan and was born on 2 July 1980. The respondent claims to have entered the United Kingdom on 25 July 2010 using a false Indian passport. She claimed asylum in Croydon on 15 September

2010. On 25 October 2010, a decision was made to refuse to grant the appellant asylum and to remove her from the United Kingdom by way of directions under Section 10 of the Immigration Act 1999. I shall refer to the respondent, Manju Gurung, as “the appellant” (as she was before the First-tier Tribunal) and to the Secretary of State for the Home Department as “the respondent.”

2. The appellant had appealed against the decision to remove her to the First-tier Tribunal (Judge Baker) which, in a determination promulgated on 17 August 2011, allowed the appeal. By Decision and Directions dated 17 April 2012, I set aside the First-tier Tribunal determination and directed that the decision be re-made in the Upper Tribunal.
3. The appellant claims to be a Bhutanese national born in Lamidanda. Her parents were both farmers born in Bhutan. The appellant claims to be of Gurung ethnicity and she speaks the languages Gurung and Nepalese. The appellant claims that from around October 1990, her father was compelled to undertake manual work for the Bhutanese government. He expressed opposition to that enforced labour and, as a consequence, the Bhutanese army came to the appellant’s home village in 1990 and took away her father and killed him. Ten days later the army returned, confiscated the appellant’s documents and personal effects and evicted her and her mother from their home. The appellant left Bhutan making her way to India to a Nepalese refugee camp in East Nepal. The appellant has identified this camp as Timai camp near Jhapa. The appellant does not know who administered the camp but she claims to have remained living there for seven years. She left the camp in 1997 having married a Nepalese national who worked at the camp. She then lived in the Parbat district of Nepal until 2001 when her husband left her. She then returned to the Timai camp to live with her mother and where she gave birth to a child. The appellant left the camp in 2005 and travelled to India. She left her daughter living with her mother in Nepal. The appellant then was encouraged by her employer to leave Nepal to work in Saudi Arabia which she did in 2007. She was never paid for her work (as the carer of a child with mental health problems) nor was she allowed out of the house where she was working. The appellant remained in this work until brought to the United Kingdom on 25 July 2010 by her employer who was on holiday in London. She remained living at her employer’s temporary address in London until 14 September 2010 when she noticed that the door had been left unlocked following a delivery of takeaway food. The appellant took the opportunity to escape from the property and she encountered a Hindi-speaking man in the street who agreed to help her. Thereafter, she was taken to the Home Office where she claimed asylum. The appellant claims that she cannot return to her mother and daughter whom she assumes continue to live in Nepal because she does not have citizenship of that country. She claims that she will not be accepted in Bhutan where she will be persecuted on account of her race (Gurung) and for her imputed political opinion.
4. Allowing the appeal, Judge Baker found the appellant to be credible. The findings, however, are marred by a number of errors. First, at [24-25] of the refusal letter, the respondent had drawn attention to a discrepancy between the appellant’s claim that there had been no education available in the refugee camp where she lived and the

background material relating to such camps which indicated the contrary. Judge Baker, on the other hand, described the “principal and apparently sole reason for the respondent doubting the appellant’s claim” to be that her geographical knowledge of Bhutan was somewhat limited; he makes no reference to the apparent inconsistency relating to education and has mis-characterised the respondent’s challenges to the appellant’s credibility. Further, at [16], Judge Baker noted the problems which the appellant may have had in communicating with the Nepalese language and also her medical condition which he considered may have placed her under a “considerable strain at the material time [of her asylum interview].” Some of the errors which appear in the appellant’s interview record were subsequently explained by way of a written statement. Judge Baker incorrectly describes this at [16] as “unchallenged camp information subsequently provided by the appellant.” In fact, the information continued to be challenged by the Secretary of State at the hearing before Judge Baker. In addition, the judge found it “odd” that the appellant had made so little effort to contact her mother and child since she had come to the United Kingdom. It does not, however, indicate how, if at all, that observation has impacted upon the appellant’s credibility as a witness.

5. The judge was also aware that the appellant claimed to be in a relationship with a Mr Achargu, a Bhutanese national who is a refugee in the United Kingdom. The judge expressed “some doubts” as to the genuineness of the claimed relationship. He then made a somewhat curious finding that,

In factors apart from raising a few lurking doubts on credibility as a result but which I have, in the balance, after the most anxious scrutiny in the round, overcome, such is not my overall balancing assessment of the totality of the evidence before me, seem to be crucial (*sic*).

6. Bizarrely the judge then goes on to say, “accordingly, as having agreed the asylum claim shall succeed as above, an Article 3 human rights appeal would also succeed, I find, in any event.” In the matter of a few sentences the judge appears to have moved from an assessment of Article 8 ECHR family/private life rights to an appeal on Article 3 ECHR grounds. Frankly, the paragraph makes little sense.
7. I find that the judge has failed properly to assess the appellant’s credibility in the light of the objections raised by the Secretary of State. I find that the Article 3/8 ECHR analysis is barely comprehensible. I set aside the determination of the First-tier Tribunal leaving none of the findings of fact in place. I have proceeded to re-make the decision.
8. The burden of proof in the appeal is on the appellant and the standard of proof is whether there is a real risk that the appellant will suffer, respectively, persecution or treatment contrary to the ECHR (in particular, Articles 2/3) if she is returned to either Bhutan or Nepal; the decision to make removal directions which was dated 25 October 2010 indicates that removal will be to “Bhutan and/or Nepal.” The refusal letter of the respondent asserts that the appellant is not a Bhutanese national as she claims and that investigations will be made to determine her correct country of

nationality (*"you will therefore be removed to Bhutan (the country of which you claim to be a national) or Nepal, your last country of legal habitual residence)."*)

9. Unfortunately, delay has occurred in this appeal between the initial hearing (when I found there to be an error of law in the First-tier Tribunal determination) and the resumed hearing which finally took place on 7 January 2014. The appellant wished to have a Gurung interpreter at the hearing to enable her to give oral evidence. Ultimately, that wish proved impossible to satisfy, HMCTS finding it impossible, despite considerable efforts, to engage the services of a Gurung interpreter. Consequently, I directed that the Secretary of State put questions in writing to the appellant arising from her written evidence and that those questions be answered by the appellant in a new consolidated witness statement. After those directions had been complied with, the appeal was listed for hearing at Bradford.
10. Although I did not hear any oral evidence from the appellant herself, I did hear from Mr Achargu. He adopted his witness statement as his evidence-in-chief. He is no longer in receipt of NASS benefits but earns £320 per week from his work. The witness was aware that the appellant has a child living in Nepal but neither he nor the appellant have contact with the child.
11. The Tribunal reserved its determination.
12. I have anxiously considered the evidence in this appeal both written and oral. I have had regard to the fact that the appellant claims to prefer to give her evidence and be interviewed in the Gurung language rather than Nepalese although she does claim to be able to speak that latter language. I have considered the medical evidence which indicates the appellant has some physical conditions and has also suffered from depression. There is a report from the Poppy Project (which assists trafficked women) which I have also considered.
13. The refusal letter records that the appellant was able to identify rivers in Bhutan and towns which she claimed to be close to her home village. She was able to identify the national dress of Bhutan (*gho* and *kira*). The respondent did not, however, (and contrary to what Judge Baker appears to have believed) criticise the appellant for her lack of knowledge of the geography of Bhutan. Rather, at [18] the respondent acknowledged that, if the appellant had left Bhutan at the age of 10, her knowledge of the country might be limited. As a consequence, the respondent considered that the appellant's "claim to be a Bhutanese national remains unsubstantiated."
14. Quoting background material relating to the relationship between Bhutan and Nepal in the 1990s, the respondent accepted that "people of Nepalese ethnicity were driven from Bhutan from 1990 onwards." The respondent also accepted [22] that the UNHCR map recorded a refugee camp in Nepal at a place called Timai. A Human Rights Watch Report of May 2007 indicated "schools in the camps only provide education from first to tenth grade; students who want to continue to grades 11 and 12 have to attend private Nepalese 'colleges' in the towns." The report also noted that "camp residents highly appreciate the education the camp schools are able to

provide, despite very limited resources ...” The appellant claimed at interview that there was no education in the Timai camp where she had lived. Indeed, the appellant had lived in the camp for eleven years from the age of 10 so, while she may have passed beyond the extent of education provided in the camp, she should, according to the background material, have enjoyed some education in her early years at the camp and the respondent considered that it would be reasonable to expect that, even if she herself had ceased education there, she would have been aware that other younger children continue to be educated.

15. In her interview (questions 61-62) the appellant had stated that she had lived in Hut 35 at Timai camp. An FCO enquiry dated 16 December 2009 indicates that “camp addresses are composed of camp name, sector number, sub-sector number, and hut number.” The respondent considered that an individual who had lived in the same hut for eleven years would be able to remember more of the address than the hut number. The enquiry made by the FCO also records that most Bhutanese refugees should be able to remember camp name, sector number, sub-sector number by heart. The letter records that:

The British Embassy in Kathmandu contacted the UN High Commission for refugees in Nepal who advised that they had been unable to find anyone in their database who matches the name and date of birth [of the appellant] provided.

16. The refusal letter at [26] also records that:

Following this UKBA forwarded your photograph to UNCHR in Nepal. UNHCR made further enquiries and as a result stated that they had visited the location you had given as your address in the camp and showed your photographs to relevant sub-sector and sector heads; UNHCR state ‘all of them expressly mentioned they had never seen the person in the photo in the camp.

17. The question arises as to how these matters may impact upon my assessment of the evidence as a whole and the appellant’s credibility in particular. On the one hand, I find that the view expressed in the FCO letter that Bhutanese refugees should know details of camp names, sector number, sub-sector number and hut number “by heart” is a little more than opinion evidence; some refugees may well remember more details than others. Further, the appellant claims to have left the camp for the first time while still a relatively young child. On the other hand, the fact that no trace of the appellant in the camp has been found either by searches of official records or by speaking to those present at the camp is much more troubling. It is troubling because the appellant claims to have spent as many as eleven years in total living in the camp with her mother; she was not a transient refugee by any means. I consider it reasonably likely that a residence of so many years in the camp would have generated some lasting written record of the appellant’s presence there.
18. The appellant’s credibility is further damaged by her claim that there was no education available to the children in the camp. That categorical assertion is plainly at odds with unequivocal background material which describes the education system which is provided in some detail. I find that, if the appellant had been telling the

truth, she would have been aware and that during a period as long as eleven years, that children were being educated in the camp even if she herself had, for whatever reason, not received an education.

19. I also find that the appellant has failed satisfactorily to explain why she has found it so difficult to make contact with her mother and child allegedly living in Bhutan. There is no suggestion that attempts at establishing contact would place her mother and child at risk. In addition, the appellant herself could have obtained evidence from the camp in order to establish that she had lived there as she claims. Her failure or reluctance to do so casts further doubt upon her credibility.
20. For the avoidance of doubt, I certainly find that the appellant has not experienced difficulties in providing evidence through a Nepalese interpreter. I am aware of what she has said in the course of the Tribunal proceedings regarding the use of Nepalese and Gurung interpreters but she did indicate in the asylum interview record, having answered 145 questions, that she had understood "all of the questions put to you today."
21. I have to consider the cumulative effect of these observations and findings upon my assessment of the credibility of the appellant's evidence. I do not find that the appellant is a witness of truth. Significantly, I find that she has failed to discharge the burden of proving that she will be at real risk if returned to either Bhutan or Nepal. I find that her lack of candour leaves the Tribunal unable to make a finding as to her nationality or, indeed, statelessness. I am aware that further enquiries will be made by the respondent to ascertain the appellant's true nationality. I am not prepared to accept that she is Bhutanese or stateless since I do not consider her evidence to be at all reliable.
22. I stress that I have considered all the evidence in reaching these findings. There is nothing in the medical evidence which might indicate that the appellant suffers from any cognitive or other mental disorder which would have prevented her from remembering accurately what happened during her life throughout an eleven year period. I note that those working for the Poppy Project found the appellant's evidence to be plausible and, whilst I found their report to be helpful, it is for the Tribunal to determine the appellant's credibility based on all the evidence including those items of evidence which were not available to the Poppy Project.
23. I find that the appellant was probably born in Bhutan or Nepal because I accept that she speaks the Nepalese and Gurung languages. I find that she has not been a refugee in a camp as alleged or at all. I find that her father was not killed or her family seized as claimed or at all. Although it does not go to the core of the appellant's claim for asylum, I have to say that I did not find plausible in any way the appellant's claim to have escaped from her oppressive employer whilst on a holiday in London. I find it likely that the appellant has come to the United Kingdom for reasons wholly unconnected with a fear of persecution or ill-treatment abroad. I find it likely that she has not told the truth regarding past events or her

national origins because she is aware that the truth would not attract a grant of refugee status in the United Kingdom.

24. I have considered Article 8 ECHR. There has been no submission that the appellant qualifies for any form of immigration status under the Immigration Rules. I note that Mr Achargu came to the United Kingdom in January 2011. I am aware that the appellant and Mr Achargu entered a relationship fully aware of the appellant's own precarious immigration status. The couple co-habit (the respondent did not challenge this) but they have no children. The Article 8 ECHR appeal turns on the question of proportionality. I found the appellant to be an individual who has made a false claim for asylum and whose presence in the United Kingdom whilst within the law while she claimed asylum and pursued the appeal process has never been justified. The public interest concerned with her removal is, in those circumstances, a strong one. Mr Achargu gave some evidence regarding his financial circumstances now in the United Kingdom but I was not given sufficient information for me to conclude that the couple could remain living here without having recourse to public funds. Having regard to the clarification of the approach which would be adopted by the Tribunal enunciated in *MF (Nigeria)* [2013] EWCA Civ 1192 and having carefully considered all the relevant evidence, I am not satisfied that it would be disproportionate for this appellant to be removed to whichever country the respondent shall determine is appropriate. The public interest concerned with her removal does not simply satisfy some bureaucratic procedure (see *Chikwamba* [2008] 1WLR 1420) but has significant force in the case of an individual who has sought to deceive the United Kingdom authorities in order to remain living here. In the circumstances, the Article 8 ECHR appeal is dismissed.

DECISION

25. The determination of the First-tier Tribunal which was promulgated on 17 August 2011 is set aside. I have re-made the decision. This appeal is dismissed on asylum grounds. This appeal is dismissed on human rights grounds (Articles 2, 3, 8).

Signed

Date 11 February 2014

Upper Tribunal Judge Clive Lane