



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

Appeal Numbers: OA/01284/2014
OA/01294/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10th September 2015**

**Decision & Reasons
Promulgated
On 22nd September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS YASHODA BURJA THAPA
MISS SARMILA BURJA THAPA
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr Lawrence Tarlow, Home Office Presenting Officer
For the Respondents: Mr David Ball, Counsel instructed by How & Co Solicitors

DECISION AND REASONS
EX TEMPORE JUDGMENT

1. The Appellant before me was the Respondent in the First-tier and the Respondents were the Appellants in the First-tier but for the sake of convenience I shall refer to the parties as they were before the First-tier Tribunal.

2. The Respondent appeals with permission a decision of the First-tier Tribunal Judge Mrs R J N B Morris, who in a promulgation dated 19th February 2015 allowed the Appellants' appeal against the refusal of entry clearance by an Entry Clearance Officer dated 12th December 2013.
3. The judge found that the family life enjoyed between these Appellants and their sponsoring discharged Gurkha father and their mother and younger siblings met the threshold for engaging Article 8. The judge further found that there being no issue as to domestic law concerning the refusals it was right to move to the issue of proportionality and decided in that context that the decisions were not proportionate. The judge found that the fact of the historic wrong meant that the decisions could not be maintained.
4. The challenge to that decision is directed in the submissions before me to the finding that the family life of the Appellants and their UK relatives is or was as at the date of decision in December 2013 of a character and quality to engage Article 8 and in the context of the assessment of proportionality a family life which should attract very much weight.
5. The judge found, and this is set out at paragraph 15, that because these Appellants had always lived in the family home with both parents other than when the father was working abroad that there was a close family unit and in that context that the Appellants and the mother and sister had maintained that close family unit up until the point when the mother and sister joined the father in the United Kingdom a little over a year before their own applications were made.
6. The judge addressed the issue as to whether or not the children or the Appellants in this case had actually established an independent family life and found that neither of them had. The judge took into account the significant evidence of frequent telephone or other contact through other modern means of communication and in particular the difficulties in maintaining that position and was satisfied that the parties were in very real contact.
7. The judge took into account the fact that both of the Appellants were in full-time studies and both financially reliant upon their UK relatives for fees, maintenance and accommodation. The judge also took into account cultural considerations in connection with the fact that neither of these Appellants are married. The judge was satisfied and has given cogent reasons as to why he found that the Appellants were part of the UK Sponsor's family unit.
8. In terms of the severity of interference, the second limb of the test of engagement with Article 8, the judge was satisfied that the interference arose not because of the mother and sister's decision to join the father in the United Kingdom but from the Entry Clearance Officer's decision. The Respondent takes some issue with that in the grounds but that was not a position that was maintained before me and on its face I find that the

judge has given adequate reasons as to why that interference arose from the Entry Clearance Officer's position rather than from the Appellants'.

9. The judge concluded that had the Sponsor been able to settle in the United Kingdom when he retired from the British Army he would have done so and that is set out at 17(ii). The inference of course is that by coming to the United Kingdom he was merely obtaining the reward that he was entitled to as with his wife and minor daughter who subsequently joined him for the service that he had provided.
10. In terms of the assessment of proportionality the judge has taken into account the guidance in Ghising to the point that where the argument for exclusion is dependent purely on issues of immigration control that is a matter which is going to be outweighed in an Appellant's favour where there has been a historic wrong, and in that regard the historic wrong in this case arises from the failure to provide an opportunity to the Gurkha Sponsor to settle in 1995 at the point when he was discharged from the army, and being an opportunity he would have taken. In terms of the causal nexus of that wrong to the Appellants' case it is evident from the chronology that at that time both of these Appellants would have been minors and would have been entitled to accompany the Sponsor in the event that he had been afforded the opportunity that he deserved at that time.
11. The judge finally concluded that the issues in respect of accommodation and maintenance raised in the Entry Clearance Officer's decision on refusal had been resolved in favour of the Appellant and there is no issue before me as to that conclusion.

Notice of Decision

Accordingly, for all the reasons that I have set out above it follows that I find that the decision of the First-tier Tribunal does not involve any material error of law and the decision shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Davidge