



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

Appeal Number: OA/10418/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 June 2015**

**Decision and Reasons  
Promulgated  
On 15 June 2015**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**ENTRY CLEARANCE OFFICER (NEW DELHI)**

Appellant

**and**

**DEEPA KUMARI RAI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms A. Brocklesby-Weller, Home Office Presenting Officer  
For the Respondent: Mr M. Puar, counsel

**DECISION AND REASONS**

**Background**

1. For the sake of continuity the Tribunal will refer to the parties as they were before the First-tier Tribunal although the Secretary of State is technically the appellant in this appeal. The appellant is a citizen of Nepal whose date of birth is 12 January 1982. She appealed against the respondent's decision dated 29 April 2013 to refuse to grant her entry clearance to join

her family in the UK as an adult dependent relative. First-tier Tribunal Judge Walker found that she did not meet the requirements of the immigration rules but allowed the appeal on human rights grounds in a decision promulgated on 19 March 2014. The judge was satisfied that, despite her age, the appellant was still dependent on her parents and had a family life that was engaged for the purpose of Article 8. The judge concluded that in the particular circumstances of the case, and in light of the historic injustice done to the Ghurkhas, the decision to refuse entry clearance was disproportionate.

2. The respondent was granted permission to appeal against the decision. Although the grounds of appeal purport to make two points they are essentially the same. The respondent argues that the judge failed to consider whether the decision showed a lack of respect for the appellant's family life of "sufficient gravity" as to engage the operation of Article 8 given that the appellant is now 33 years old, has been separated from her family since 2002 in order to study in the USA, is working in the USA (albeit only on campus) and is not "wholly or mainly" dependent financially on the UK sponsor. The respondent seeks to distinguish the facts of the case from *Ghising (family life adults - Ghurkha policy)* [2012] UKUT 00160. The respondent argues that her dependency is only temporary given that she is a student and that it was not open to the judge to find that they were a close family unit when there has been no element of co-habitation for a long time.
3. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal decision involved the making of an error of law.
4. I heard submissions from both parties, which have been noted in my record of proceedings and where relevant are incorporated into my findings.

### **Decision and reasons**

5. After having considered the grounds of appeal and the oral arguments I am satisfied that the First-tier Tribunal decision did not involve the making of an error of law.
6. The judge carefully set out the long history to the appellant's application for entry clearance [3-5] and the evidence before her [14-22]. On 30 March 2007 the appellant applied for entry clearance to join her father in the UK alongside her mother and two brothers. They were granted entry clearance but the appellant's application was refused although there was perhaps little discernable difference between the appellant and her older brother who was also over 18 at the time except that he was studying in Nepal and she was studying in the USA. The appellant said that when she went to study in the USA in 2002 the plan was for her to complete her studies and then return to her family in Nepal.

7. The respondent argues that it was not open to the judge to conclude that the appellant had a family life with her parents that engaged the operation of Article 8 in view of her age, the fact that she had been separated from her family since 2002, she was working in the USA (albeit on campus) and was not “wholly or mainly” financially dependent on the sponsor. Given that the appellant has now lived apart from her family for a long period of time it was argued that she now has an independent life and that the decision did not show a lack of respect for her right to family life of sufficient gravity as to engage the operation of Article 8 of the European Convention. The respondent relies on the following extract from the decision in *Kugathas v SSHD* [2003] EWCA Civ 31:

“Generally the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.”

8. In *Ghising (family life-adults-Gurkha policy)* [2012] UKUT 00160 the Tribunal considered the authorities relating to family life between adult relatives in some detail. The Tribunal concluded that the decision in *Kugathas* had been read too restrictively in the past and ought to be read in the light of subsequent decisions of the domestic and Strasbourg courts [56]. The Tribunal noted that the Strasbourg court found that family life existed between adult relatives in a number of cases without evidence of exceptional dependence or necessarily the need for cohabitation [60]: see for example *Boughanemi v France* (1996) 22 EHRR 228. A significant factor was whether the adult child has founded a family of his own. If he is still single and living with his parents he is likely to enjoy family life with them [61]. The Tribunal emphasised that the assessment of whether family life exists for the purpose of Article 8(1) is highly fact-sensitive. The Tribunal also had regard to the following well-known dicta of Lord Bingham in *Huang v SSHD* [2007] 2 AC 167:

“Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this ground seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.”

9. In light of this framework I am satisfied that the judge’s findings as to whether the decision showed a lack of respect for the appellant’s family life that was of sufficient gravity as to engage the operation of Article 8 are sustainable on the evidence before her. The judge was able to hear evidence from the witnesses and assess what weight to place on the ties

between the appellant and her family members in the UK. The judge found the appellant's father to be an impressive witness and was satisfied that there was daily contact between the appellant and members of her family in the UK. She said that they clearly found the separation of the family difficult but had tried their best to arrange some family visits despite difficulties in making the practical arrangements. The judge was satisfied that the fact that they made those visits "speaks of the close family bond" between the appellant and her family in the UK [29]. The judge was satisfied that the appellant is unmarried and has not formed an independent family unit. While she might not be "wholly or mainly" financially dependent on the sponsor she was limited as to the number of hours a week that she could work on campus so without her father's financial contributions she could not survive [31 & 34]. Having taken into account the family history and heard evidence from the appellant's father I find that it was open for the judge to conclude that this was a "very close family unit" [39].

10. Although the appellant has not lived with her parents for a long period of time the essence of Article 8 is the bond between the adult relatives, which the judge found was still a "close family bond". The appellant comes from a culture where an unmarried daughter would still expect to live within the extended family home and the evidence was that she planned to return to her family after she finished her studies in the USA. It was only after she was refused entry clearance to the UK to join her father alongside other members of the family that she had to make further plans to continue her education in the USA. As a matter of circumstance the appellant has been living independently but her family life, including social, emotional and financial support, is still quite firmly centred on her immediate family in the UK. In these circumstances I am satisfied that the judge's findings relating to the close bonds between the family were open to her on the evidence and disclosed no material error of law. No challenge was made to the judge's assessment of proportionality, which was well reasoned and in accordance with the guidance given by the Tribunal in the later case of *Ghising & others (Ghurkhas/BOCs: historic wrong; weight)* [2013] UKUT 00567.
11. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of an error of law. The decision shall stand.

## **DECISION**

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed 

Date 11 June 2015

Upper Tribunal Judge Canavan