



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10731/2015
IA/10732/2015

THE IMMIGRATION ACTS

Heard at: Field House
On 26 June 2017

Decision and Reasons Promulgated
On 05 July 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

Mrs Laxmi Ghimire Basnet
Mr Kush Basnet
(No Anonymity Directions Made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr R Singer, counsel instructed by Paul John & Co Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Nepal, born on 29 March 1986 and 17 June 1984 respectively. They are husband and wife. I shall refer to the first appellant as the appellant. She came to the UK to study at the London School of Management and Science and her husband came as her dependant.
2. The appellant's leave to remain was extended until 31 December 2014. Her application made on 30 December 2014 to vary the leave to remain was refused by the respondent on 5 March 2015.
3. In her decision promulgated on 23 May 2016, First-tier Tribunal Judge R L Head-Rapson, dismissed their appeals under Appendix FM of the Immigration Rules and

under Paragraph 276ADE(1) as well as under Article 8 of the Human Rights Convention.

4. On 26 April 2017, First-tier Tribunal Judge Page granted the appellants permission to appeal on the basis that it was arguable that the Judge had given insufficient weight to the circumstances following the earthquake in Nepal. It had been contended that there were very significant obstacles to integration into Nepal; that they had nowhere to live and would be destitute; that the Judge failed to mention or consider whether the effects of the earthquake in Nepal were such as to amount to significant obstacles to their re-integration into Nepal. The Judge had made reference to the evidence but did not list “the objective evidence about the earthquake.”
5. Mr Singer relied on three grounds. First, he asserted that the Judge failed to have regard to relevant facts in her assessment as to whether the parties met the requirements under Rule 276ADE(1)(vi). Notwithstanding her rejection of the appellant's general credibility, the underlying background facts still amount to “very significant obstacles” to re-integration into Nepal.
6. The appellants argued that as a result of the widespread devastation caused by the earthquake, they did not have anywhere to live and would be destitute. Hundreds of thousands of people were made homeless and entire villages were flattened.
7. He submitted that the consideration under paragraph 276ADE was a limited assessment by the Judge – namely at paragraphs 54-61 of the determination. There was one single sentence at [58] where the Judge stated that she was not satisfied that the appellant met the requirements under paragraph 276ADE as there would not be significant obstacles to her integration in Nepal as she had lived there most of her life.
8. There was evidence of devastation following the destruction of the family house. There was oral evidence that the home was destroyed. This was referred to by the Judge at [46] when the second appellant stated that the house was no longer there and he would not be able to find work in Nepal.
9. Mr Singer referred to the decision in Treebhawon and others (NIAA 2002 Part 5A – Compelling Circumstances Test) [2017] UKUT 00013. There the Upper Tribunal held that:
 - (a) where the case of a foreign national who is not an offender does not satisfy the requirements of the Article 8 ECHR regime of the Immigration Rules the test to be applied is that of compelling circumstances. The Parliamentary intention underlying Part 5A of the 2002 Act is to give proper effect to Article 8 ECHR.
 - (b) Thus a private life developed or established during periods of unlawful or precarious residence might conceivably qualify to be accorded more than little weight and under s.117B(4) and (5) are to be construed and applied accordingly.
 - (c) Mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even when multiplied, are unlikely to satisfy the test of “very significant hurdles” at paragraph 276ADE of the Immigration Rules.

10. The Judge failed to have regard to the various factors set out in the policy guidance. The failure to consider the impact of the earthquake and other material factors on the parties' re-integration was a material error of law: R (Iran) v SSHD [2005] EWCA Civ 982.
11. Mr Singer submitted in Ground 2 that the Judge failed to assess whether on his own merits, the second appellant could meet the requirements of the Rules. He submitted it is evident from paragraph [61] that the second appellant's appeal was dismissed because his wife lost: the Judge stated that the second appellant's appeal falls with the first appellant's and therefore he did not meet the requirements of the Immigration Rules.
12. The Judge was however under a duty to consider whether on his own merits the second appellant could meet the requirements of paragraph 276ADE(1)(vi) of the Rules. There were no factual findings on his ability to re-integrate and whether he would face very significant obstacles to re-integration.
13. The Judge in effect did not undertake a broad evaluative judgement with regard to the adverse circumstances that would be faced by the appellants on return.
14. He also submitted (Ground 3) that as a result of the asserted errors, the Judge's assessment under Article 8 outside the Rules could not be safe.
15. On behalf of the respondent, Mr Kandola noted the assertion that the Judge's reasoning with regard to paragraph 276ADE as set out at paragraph [58] might have been "too simplistic". However, the Judge considered the evidence and made proper findings for her conclusion. She did undertake a broad evaluative assessment. He submitted, following Treebhawon that mere hardship, hurdles and difficulty and upheaval, even when multiplied, do not satisfy the very significant hurdles test.
16. The Judge found that the appellants' evidence was simply not credible. In particular, the first appellant's evidence about which family members lived with their son in Nepal contradicted the second appellant's. She stated that her brother in law resided in the family household whereas the second appellant did not mention his brother. The contention therefore that the appellants would not be able to have support from his brother was not credible.
17. The consequent finding at [58] was accordingly justified.
18. In reply, Mr Singer submitted that the Judge did not go so far as to reject all the evidence. In any event, the Judge would have had to find that they had not proved that the house was destroyed. There had accordingly been an error of law.

Assessment

19. The First-tier Judge has set out the relevant requirements of law extensively. She took into account the documentary evidence which had been referred to her. She took into account the oral evidence given by the appellants. She assessed the evidence of each appellant separately.

20. She had regard to the appellant's contention that she had instructed a fraudulent agent to assist her in applying for a visa [34-36].
21. She also had regard to the availability of family in Nepal. She found that both had close family members there. Both had parents and siblings, together with their five year old son who resides with their paternal relatives at the second appellant's family home [43].
22. The first appellant stated that her son was born in London and was then taken to Nepal in 2011 when he was ten months old. At that time her husband was ill and she could not look after her son [45]. Her parents in law and brother in law live with her son. The appellant stated that she had not returned to Nepal as she does not have enough money and needs to take care of her husband [45].
23. The appellant also contended that she could not return because of ongoing problems since the earthquake in Nepal. She communicates with her son via Skype regularly [45].
24. The Judge had regard to the second appellant's assertion that they could not return to Nepal due to the earthquake as they had nowhere to live as the house was destroyed [46]. The second appellant contended that they could not return to live with their son and his family "due to a lot of domestic problems". When asked who lived in his family household, the second appellant did not mention his brother. When questioned about this, given the first appellant's claim that his brother resided there, the second appellant stated that his brother lives separately, close to the city. He stated that their house is no longer there and he will not be able to find work in Nepal. That was the nature of the problems [46].
25. She accordingly found that there were many inconsistencies in the evidence of both appellants. The first appellant's evidence about which family members lived together with their son in Nepal was contradicted by her husband's.
26. The Judge did not dispute that the second appellant received medical treatment for burns which required input and appointments up to December 2012. However, they had given no up to date medical reports. She did not accept that the second appellant continued to regularly see his specialist. [48]
27. There had been no separate contention that the medical circumstances relating to the second appellant constituted a basis for granting a period of leave to remain. In any event the treatment could be continued in Nepal. His current medication was paracetamol which is widely available [49].
28. Her finding that the appellants' evidence lacked credibility is sustainable.
29. The Judge has properly taken into account their claims, including that regarding the lack of accommodation following the earthquake in Nepal. She did not find the appellants credible in respect of their account of why they could not return to Nepal and in particular, with regard to accommodation.
30. Although she made no express findings of fact as to where they could reside on return, the Judge did have regard to the fact that the appellants' family were residing there and they could be accommodated there. Accordingly the finding that

they had failed to establish that they would face significant obstacles to their integration into Nepal must be read in the light of the earlier findings that the Judge made including the adverse credibility findings.

31. Both have close family members in Nepal. Both have parents and siblings, including their five year old son who lives with the second appellant's parents at the family home. The first appellant had stated that she had not returned to Nepal as she did not have enough money and needed to take care of her husband [45]. There was never an assertion that she would have nowhere to stay.
32. The second appellant was directly asked if they could not return to live with their son and his family and he stated that they could not do so on account of his alleged domestic problems.
33. The second appellant also contended that his brother lived separately whereas his wife claimed that he resided with his family at the home. When asked about the nature of "these problems" he stated that the house was no longer there and he would not be able to find work in Nepal.
34. The Judge also considered the claim under Article 8 of the Human Rights Convention. She had regard to s.117A and B of the 2002 Act. She followed the "five stage process" in Razgar, at [69]. She did not find that there were any unique or exceptional circumstances applicable. Their return would be proportionate in the circumstances [69].
35. Although the Judge might have been more expansive with regard to the reasons for the findings she made, she has taken account of the contentions and evidence regarding the availability of accommodation following the earthquake. She has given proper reasons for her finding that there would not be very significant difficulties in returning to live in Nepal. She also found that it was a proportionate interference to expect them to return to Nepal - [69(iii)].

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Date 4 July 2017

Deputy Upper Tribunal Judge C R Mailer

