



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01221/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 26 June 2018

Decision & Reasons Promulgated  
On 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ENTRY CLEARANCE OFFICER, NEW DELHI

Appellant

and

MISS KUSUM GURUNG  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer  
For the Respondent: Mr D Shrestha, Counsel, instructed by Courtney Smith Solicitors

DECISION AND REASONS

1. I shall refer to the parties as they were before the First-tier Tribunal. Therefore, the Entry Clearance Officer is once more the Respondent and Ms Gurung is the Appellant.
2. This is a challenge by the Respondent to the decision of First-tier Tribunal Judge Seifert (the judge), promulgated on 8 August 2017, in which she allowed the Appellant's appeal against the Respondent's decision of 1 December 2015, refusing to issue entry clearance to join her father, a former Gurkha soldier, in the United Kingdom.

### **The judge's decision**

3. With due respect to the judge, her decision could have been better structured. Under the sub-heading "Findings and Conclusions" there follows a fairly lengthy recitation of the evidence, with actual findings and conclusions only appearing towards the end of the decision. In any event, substance is always more important than form.
4. At [21] to [23] the judge sets out the evidence, written and oral, of the Sponsor. At [31] she states that she found the Sponsor to be a credible witness. At [35] the judge directs herself to relevant case law including Ghising [2012] UKUT 00160 (IAC), Rai [2017] EWCA Civ 320, and Gurung & Others [2013] EWCA Civ 8. Then, at [37], the judge says the following:

"Having considered the evidence as a whole, I am satisfied that Ms Gurung has demonstrated to the required standard that she had a family life with her parents which existed at the time of their departure to settle in the UK and that this endured beyond it, notwithstanding they having left Nepal when they did. Mr Gurung would have applied to settle in the UK on his discharge from the army had this been possible. His children would have been brought up here, had that been possible at the time. The Appellant was living with Mr Gurung until he came to the UK for settlement and had always been supported emotionally and financially by him in the manner described in the evidence. Family life existed when Mr Gurung left Nepal and endured despite his having left Nepal. She was not eligible to come with him at that time. She has not worked and was described by Mr Gurung as not bright and needing some help. Contact has been maintained and his mother in law lives with her in the circumstances described. I am satisfied that it has been shown on the evidence that there are emotional ties between Mr Gurung and the Appellant going beyond those normally expected to exist between a parent and adult child. I find that Article 8 is engaged and that the Respondent's decision interferes with family and private life. The remaining matter is proportionality."

5. Then at [38] to [40] the judge considers the issue of "historic injustice" in the context of Gurkha cases. She regards this as being a significant factor and, having considered relevant matters in the round, concludes that the Respondent's decision was disproportionate. On this basis the appeal was allowed.

### **The grounds of appeal and grant of permission**

6. The grounds of appeal are, with respect not entirely easy to follow. It is expressly stated that, "the ECO does not dispute that a family life exists between the Appellant and her Sponsor" (in respect of the first set of grounds), and "the ECO grounds did not dispute the existence of family life..." (in respect of the second set). However, notwithstanding this, the grounds then appear to go on and try and dispute the existence of family life by reference to the issue of emotional dependency between a parent and an adult child.

7. Permission to appeal having been refused by the First-tier Tribunal, by a decision dated 4 May 2018, Upper Tribunal Judge Coker concluded that the grounds were arguable on the basis the judge may have failed to give adequate reasons for the conclusions reached. Judge Coker also alludes to the possibility that the judge's decision may be perverse although she acknowledges the high threshold applicable to such challenges.

### **The hearing before me**

8. At the outset Ms Isherwood confirmed that she was not seeking to pursue a perversity challenge. Her arguments were based on the issue of reasons only. She acknowledged that the judge's positive credibility finding contained in [31] has not been and is not challenged by the Respondent. She also accepted that the judge's treatment of the historic injustice issue was not challenged. Ms Isherwood contended that there was a lack of reasoning in [37] of the decision. It was not clear, she submitted as to what the judge was saying or why.
9. Mr Shrestha submitted that the judge had taken the Sponsor's evidence into account, found it to be credible, and then applied it to the appropriate legal test. He also emphasised the fact that the Respondent's grounds themselves stated that the existence of family life had not been disputed.
10. Ms Isherwood made no reply.

### **Decision on error of law**

11. As I announced to the parties at the hearing, I conclude that there are no material errors of law in the judge's decision.
12. I note that Ms Isherwood did not seek to pursue a perversity challenge in this case, and in my view rightly so. The evidence from the Sponsor was capable of providing a platform upon which a finding of family life could be properly based.
13. The core issue here relates to the sufficiency or otherwise of reasons. In considering that core issue I have read the judge's decision sensibly and in the round. The reasons for my conclusion that the judge's decision is sound are as follows.
14. First, the judge found that the Sponsor's evidence was credible (see [31]), and, importantly, this has not been challenged by the Respondent. That credible evidence is set out in [21] to [23] of the decision. It states, amongst other things, that the Appellant was financially and emotionally dependent upon the Sponsor. She had not worked, and had no income. She had been dependent upon him throughout her life. She had not in fact sought to try and find work overseas. She was "not bright and needs some help". There was regular communication with the Sponsor.

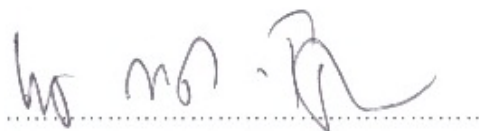
15. Second, the judge correctly directed herself in law in respect of the applicable test for relationships between parents and adult children. Not only are relevant authorities referred to in [35], but more importantly, in [37] the appropriate terminology is employed by the judge, namely the need to show that there was emotional and financial support over and above that normally expected to exist between a parent and adult child. Significantly, the judge specifically refers back to the evidence that she had, by virtue of [31], already found to be credible. Therefore, although the various aspects of the relevant evidence are not set out in detail in [37] itself, they are clearly identifiable on the face of the decision and there is a connective chain, as it were, between that evidence and the findings and conclusions ultimately reached.
16. Third, Miss Isherwood indicated that there was perhaps a failure by the judge to make a finding that any family life existing at the time of the Sponsor's departure from Nepal had continued thereafter. Such a suggestion is misconceived. At a couple of points in [37], the judge uses the term "endured", which makes it clear enough that she was indeed finding that family life had continued beyond the Sponsor's departure.
17. Fourth, although not of crucial significance here, the Respondent's grounds themselves states that the existence of family life was "not disputed". On the face of it, this is clearly inconsistent with the challenge being raised before me.
18. Fifth, whilst I appreciate that the judge's decision may perhaps be considered generous, that in itself is certainly does not disclose an error of law.
19. Sixth, in respect of the second aspect of the judge's decision, namely the proportionality exercise including the assessment of the historic injustice point, there has been no challenge to this by the Respondent and I find in any event it is perfectly sound.
20. For the above reasons the judge's decision stands and the Respondent's appeal to the Upper Tribunal is dismissed.

### **Notice of Decision**

**The decision of the First-tier Tribunal does not contain errors of law.**

**The decision of the First-tier Tribunal shall stand.**

No anonymity direction is made.



Signed

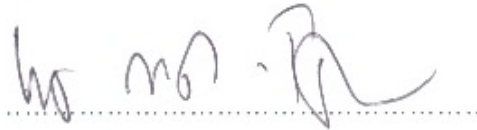
Date: 28 June 2018

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a full award of £140.00.

A handwritten signature in blue ink, appearing to read 'Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 28 June 2018

Deputy Upper Tribunal Judge Norton-Taylor