



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15255/2016

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 23<sup>rd</sup> May 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR CHHATRAPATI RAI RAI  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the appellant: Mr B Caswell, Counsel, instructed by Everest Law Solicitors LLP  
For the respondent: Mr Diwyncz, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. Although it is the Secretary of State who is the appellant in these proceedings, for convenience, I will refer hereinafter to the parties as they were in the First tier Tribunal.
2. The appellant is a national of the Nepal, born on 16 August 1990. On 21 April 2016 he applied for entry clearance in order to settle on the basis he was dependent on his mother, Mrs Kharka Maya Rai. Her application for settlement as the widow of a former Ghurkha was made at the same time and was granted on 21 May 2016. She came to United Kingdom in June 2016.

3. His application was refused on 10 May 2016. In the decision the entry clearance officer was not satisfied that family life existed between the appellant and his mother.
4. His appeal was heard at Taylor house on 31 July 2017. In a decision promulgated on 14 August 2017 First-tier Tribunal Judge S Taylor allowed the appeal. The judge heard from the appellant's mother, who at that stage was living in military housing in Catterick. Her evidence was that the appellant lived in the family home and was financially dependent upon her. His mother had not returned to Nepal since but evidence of ongoing 'viber' calls was produced.
5. The judge found that the appellant did not meet the immigration rules or the respondent's instructions. The appeal was decided outside the rules on the basis of freestanding article 8 principles. At paragraph 12 the judge referred to family life in the context of Nepal, stating the culture was that a single child living at home would be considered a child of the household. The judge found that the appellant had always lived with his mother, who had brought him up since her husband died in 1999. The judge concluded that the appellant and his mother had enjoyed family life in Nepal; at the time of hearing he was 26 years of age; their separation engaged article 8 and the refusal was not proportionate having regard to the historical unfairness in the application of the immigration provisions to the Regiment.
6. Permission to appeal was granted on the basis that it was arguable the reasoning for concluding article 8 was engaged was inadequate. It was also arguable that the proportionality consideration was flawed.

### The Upper Tribunal

7. At hearing Mr Diwyncz relied upon the grounds advanced in the application which led to the grant of leave. In particular, the challenge was to the adequacy of the reasoning in the judge's finding that family life existed.
8. Mr Caswell made the point that at the date of decision the appellant and his mother were together. I was referred to the bundle prepared for the Upper Tribunal hearing. This includes evidence of financial remittances and ongoing contact by way of video calls. I was also provided with a copy of the decision PD and others (Article 8- conjoined family claims) Sri Lanka [2016] UKUT 00108 . That decision held that in considering the article 8 claims of multiple family members regardless to be had to the claims jointly so as to ensure that all material facts were taken into account in each individual case.

## Conclusions

9. I find the judge has not adequately explained the finding that family life for the purposes of article 8 was established. The reasoning is contained in paragraph 12 and I find it is insufficient. There is reference to cultural traditions but no further explanation. The appellant has a married sister in Nepal who lives independently. He lives with his brother whose application for settlement was also refused. I do not find the decision of PD and others (Article 8- conjoined family claims) Sri Lanka [2016] UKUT 00108 assists the present appellant. The circumstances of the individuals are distinct.
10. The refusal letter pointed out the appellant had no disabilities and it was stated he and his brother earned a living by labouring. The respondent had concluded that he was able to look after himself and live independently. Given this and his age the judge needed to provide more reasons that that given for finding family life continued to exist. Consequently, my conclusion is that the decision materially errs in law in this regard.
11. The respondent has also challenged the proportionality assessment. It was pointed out that the appellant's father completed his service in 1968 and was widowed, marrying the appellant's mother in 1982, some 14 years later. It was argued that had his father being granted leave to enter the United Kingdom at the time his service was completed in 1968 he would not have met the appellant's mother. A further issue raised related to the financial considerations, with the appellant's mother being reliant upon public funds. These issues are not adequately dealt with in the decision.

## Decision

The decision of First-tier Tribunal Judge S Taylor materially errs in law and is set aside. The matter is remitted for de novo hearing before the First tier Tribunal.

Francis J Farrelly  
Deputy Upper Tribunal Judge