



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15527/2016
HU/15534/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15th May 2018

Determination Promulgated
On 21st May 2018

Before

Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE LINDSLEY

Between

SABINA SHRESTHA
MIJJAL SHRESTHA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel, instructed by Everest Law Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants are citizens of Nepal born in 1987 and are a married couple. They arrived in the UK on 15th September 2012, the first appellant as a Tier 4 student migrant and the second appellant as her dependant husband. They had leave as a Tier 4 student and student dependent respectively until April 2016. On 17th March 2016 they applied for leave to remain on the basis of their private lives, and argued that they should be granted a period of leave to remain given the devastation of their family homes and loss of family members in Nepal caused by the earthquakes in April and May 2015, and also because of health issues relating to both of them. This application was refused in a decision of the respondent dated 9th June 2016. Their appeal against this decision was dismissed by First-tier Tribunal Judge Miller in a determination promulgated on the 1st December 2017.
2. Permission to appeal was granted by Judge of the First-tier Tribunal PJM Hollingworth on 8th March 2018 on the basis that it was arguable that the First-tier judge had erred in law in failing to give separate reasoning for why there were no very significant obstacles to integration and why there were no exceptional circumstances which meant that the decision to remove the appellants was not contrary to Article 8 ECHR.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. It is argued in the grounds of appeal for the appellants that the treatment of the issue of exceptional circumstances and the appeal outside of the Immigration Rules on Article 8 ECHR grounds was insufficient at paragraph 46 of the decision as all that is said is that the appellants could not meet paragraph 276ADE of the Immigration Rules and that provision did not apply the same test as was needed under Article 8 ECHR looked at in broader terms.
5. The appellants had requested a short period of discretionary leave to remain to enable them to come to terms with the destruction of both family homes and the death of three family members. This was because following the earthquakes the families of the first and second appellants have both only a single room for their occupancy and thus no space to house the appellants on their return; further the families were not in a position to support them financially; and, in addition, the appellants were both unwell – the first appellant having reactive depression and the second appellant having a condition which was yet to be diagnosed which made it difficult to swallow food. It is argued that there would not be adequate medical treatment in Nepal for these conditions and that they would also be exposed to aftershocks which would worsen their complaints. It was argued that after a period of leave then the situation could be re-evaluated and if their families had rebuilt their homes and the appellants' health improved then the respondent would be entitled to make a new decision requiring them to leave.

6. In oral submissions Ms McCarthy explained that the appellants contended that they were entitled to a period of leave in the order of 30 months, which would be a period of time in which the two family homes might be rebuilt in Nepal as there were delays in obtaining loans and in the rebuilding process, and thus enable the appellants to return to the accommodation they had occupied when they left Nepal. She did not argue that it was important whether the material factors were dealt with under the Immigration Rules at paragraph 276ADE(1)(vi) or outside of the Immigration rules, but it was important that all matters were looked at cumulatively and that proper reasons were given for the dismissal of the appeal. The error of law argued for was a reasons challenge.
7. The First-tier Tribunal erred, Ms McCarthy argued, in the conclusions at paragraphs 42 to 46 of the decision as it was assumed that the first appellant's father's business was available to be taken over by her when in fact it had closed down and her father had experienced a heart attack. The first appellant had said that she and the second appellant could not obtain work on return to Nepal, and could not afford to rent a room for themselves. The evidence is set out at paragraphs 19 and 29 of the decision. There were no adequate reasons for not accepting the evidence of the appellants on these issues. Ms McCarthy accepted that there was no expert or country of origin evidence which supported the first appellant's contention that despite her qualifications and work experience she would not be able to obtain work which would enable her to rent a room for herself and the second appellant.
8. We decided that we did not need to call on Mr Jarvis.

Conclusions – Error of Law

9. At paragraphs 43 to 35 of the decision the First-tier Tribunal sets out its conclusions relating to paragraph 276ADE(1)(vi) of the Immigration Rules. We find that all issues raised by the appellants can properly be dealt with by consideration of this provision of the Immigration Rules. This is because the appellants are claiming that they should be permitted to remain in the UK for a period of two to three years because they would have very significant obstacles to integration on return due to earthquake damage to their family homes and a lack of affordable rented accommodation; and due to high unemployment levels in Nepal, and their ill health, which would leave them without sufficient income to survive.
10. The First-tier Tribunal considered, in relation to paragraph 276ADE(1)(vi), the issues of lack of accommodation, difficulties obtaining employment and the second appellant's ill-health. It was concluded that the first appellant should be able to obtain employment and the couple therefore find accommodation with friends or family. It was found that there was no evidence that the second appellant had anything medically wrong with him, and it was noted that he was working part-time in Tesco. It was also not believed that it would take the parents of the appellants as long as 2 or 3 years to rebuild their homes.

11. We are satisfied that the reasoning of the First-tier Tribunal was sufficient given the quality of evidence tendered by the appellants. There was no evidence supporting the first appellant's contentions that despite being in part-time work in the UK and having worked in a bank in Nepal, and given her MBA qualification, due to high unemployment she would not be able to obtain any or any full-time employment on her return sufficient to provide for herself and the second appellant, particularly given that despite his claimed medical issues he was also capable of taking general part-time employment in the UK. The appellants had not put before the First-tier Tribunal any country of origin evidence regarding unemployment levels in the first and second appellants' areas of work in Nepal or evidence of any unsuccessful work search in Nepal conducted from the UK or via relatives in Nepal. There was no country of origin evidence supporting a high level of rent being needed to secure a room in Nepal. There was also no supporting documentary evidence about the progress on rebuilding the appellants' parents' homes. The oral evidence given by the appellants on these issues also contained very little detail: for instance, there are no specifics relating to a lack of available jobs in the first appellant's area of work or her job search; details about enquiries about places to live in Nepal; or about the progress on rebuilding the homes, although the appeal took place two and a half years after the devastating earthquakes. Although we recognise that an immigration appeal may succeed despite the lack of any corroborating evidence, where, despite time and facilities to proffer evidence there is there is no evidential support for assertions of the nature made by the appellants in this case it seems to us that a judge adequately performs his task by saying that they are rejected.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We uphold the decision of the First-tier Tribunal dismissing the appeal.

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 15th May 2018