



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07669/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House (by remote video means)
On 4 September 2020

Decision & Reasons Promulgated
On 18 November 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

POONAM RAI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moriarty of Counsel, instructed by Everest Law Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Skype and there were no technical, audio or visual issues during the hearing. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The documents were available in paper format on the court file.
2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Abebrese promulgated on 25 February 2020, in which the Appellant's appeal

against the decision to refuse her human rights claim for entry to the United Kingdom as the adult dependent child of a Gurka settled here, dated 22 March 2019, was dismissed.

3. The Appellant is a national of Nepal, born on 18 August 1977, who made an application for entry clearance to the United Kingdom on 10 January 2019 to join her parents who had both been granted indefinite leave to enter the United Kingdom and arrived here on 26 November 2010, where they have been residing ever since.
4. The Respondent refused the application the basis that the Appellant did not meet the requirements of the Immigration Rules for a grant of entry clearance, nor did she meet the requirements of the discretionary policy for entry clearance for dependent children of Gurkhas. The Appellant was 41 years old at the date of application, was in good health, educated, able to care for herself and able to obtain employment. The Appellant had siblings in Nepal who had not applied for entry clearance. Overall, the Respondent was not satisfied that the Appellant was fully financially and/or emotionally dependent on her parents in the United Kingdom. Whilst the historic injustice in relation to Gurkhas had been considered, it was not accepted that it outweighed the public interest and overall Article 8 of the European Convention on Human Rights was not engaged. An Entry Clearance Manager reviewed the decision and maintained it on 5 November 2019.
5. Judge Abebrese dismissed the appeal in a decision promulgated on 25 February 2020 on all grounds.

The appeal

6. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal has materially erred in law in relation to its assessment of the historic injustice in cases such as these, by stating that it was not clear why the Appellant had not applied for entry clearance earlier, when this was because the policy did not permit applications from adult children absent special circumstances prior to 2015. The First-tier Tribunal's findings on whether Article 8 is engaged or not is wholly unclear and there are no clear findings as to whether there is real, or effective, or committed support for the purposes of family life in accordance with the test in Rai v Entry Clearance Officer [2017] EWCA Civ 320. Secondly, that there are both factual and legal errors in the First-tier Tribunal's proportionality balancing exercise, in particular the Appellant does not have any siblings in Nepal, her sister is in Canada and her brother died in 2009. In any event whether or not there were siblings in Nepal was not relevant to the question of whether the Appellant had family life with her parents, nor was it relevant as to whether it was the Appellant's parents' choice to leave Nepal and come to the United Kingdom, nor was it relevant whether there were employment opportunities available to the Appellant in Nepal.
7. At the hearing, on behalf of the Respondent, Mr Whitwell conceded a material error of law in the decision of the First-tier Tribunal, who had made a decision which was confused and did not make any clear findings on the engagement of Article 8 of the European Convention on Human Rights or on the proportionality of the refusal.

Findings and reasons – error of law

8. The Respondent's acceptance of an error of law in this case was entirely appropriate and I indicated during the hearing that I was in agreement with it, that there was a material error of law such that the decision of the First-tier Tribunal must be set aside.
9. The decision of the First-tier Tribunal is relatively brief, fails to set out the legal framework or make any appropriate self-direction as to the test to be applied as to whether first, Article 8(1) family life is engaged and secondly, as to the relevant considerations for the proportionality balancing exercise and the importance of the historic injustice to Gurkha families, which is, absent particular adverse circumstances, usually sufficient to outweigh the public interest in maintenance of immigration control.
10. The findings of the First-tier Tribunal are contained in paragraphs 15 to 17 of the decision, but without any clear conclusions, or even consideration of relevant matters. Paragraph 15 of the decision is so poorly drafted to the extent that it simply doesn't make any sense at all. It cannot clearly be read, alone or in conjunction with the rest of the decision as containing any actual findings as to whether Article 8(1) is engaged or not, or even if relevant factors had been considered as part of this or not.
11. Paragraph 16 of the decision appears to find that the historic injustice is outweighed for the reasons provided by the Respondent in the refusal decision because the Appellant's parents chose to leave the Appellant in Nepal, alongside other siblings who remain there and the Judge was not satisfied that any income in Nepal would be insufficient such that the Appellant had to rely solely on the income of her parents. Those findings do not directly relate to the historic injustice at all, nor do they provide any sufficient basis for reaching a conclusion opposite to that which would normally be expected (if Article 8(1) was engaged at all), absent particular circumstances, such as criminality. It also includes a factual error about the Appellant's siblings, about whom there was unchallenged evidence that one no longer resided in Nepal and one was deceased. These factual errors were repeated again in paragraph 17, which is also muddled between the concepts of family life, family life the purposes of engaging Article 8(1) and a wholly irrelevant consideration of whether the Appellant has been prevented from leading a normal life.
12. Overall, the First-tier Tribunal's decision contains material errors of law and has in essence failed entirely to discharge the task that it was faced with to make clear findings to determine this appeal. The decision is muddled, confused, in places makes no sense and in any event makes no clear findings with reference to the relevant test to be applied. For these reasons, the decision of the First-tier Tribunal must be set aside and in the light of the errors within it, there are no findings of fact which can be preserved.
13. At the end of the hearing, the parties agreed that no further evidence was required to remake the decision, which would be made on the basis of written submissions from

both parties, following which I would remake the decision on appeal on the papers, issuing one comprehensive decision covering both the error of law and remake elements. Directions were given to the parties to make written submissions, which were duly complied with.

Re-making the appeal

Relevant law

14. The legal position for cases such as these has most recently been summarised by the Court of Appeal in Rai from paragraphs 17 onwards, as follows:

“17. In Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31, Sedley LJ said (in paragraph 17 of his judgement) that “if dependency is read down as meaning “support”, in the personal sense, and if one adds, echoing the Strasbourg jurisprudence, “real” or “committed” or “effective” to the word “support”, then it represents... the irreducible minimum of what family life implies”. Arden LJ said (in paragraph 24 of her judgement) that the “relevant factors... include identifying who are the relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom he has resided in the past, and the forms of contact he has maintained with the other members of the family with whom he claims to have a family life”. She acknowledged (at paragraph 25) that “there is no presumption of family life”. Thus “a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties”. She added that “[such] ties might exist if the appellant were dependent on his family or vice versa”, but it was “not ... essential that the members of the family should be in the same country”. In Patel and others v Entry Clearance Officer, Mumbai [2010] EWCA Civ 17, Sedley LJ said (in paragraph 14 of his judgement, with which Longmore and Aikens LJJ. agreed) that “what may constitute an extant family life falls well short of what constitutes dependency, and a good many adult children... may still have a family life with parents who are now settled here not by leave or by force of circumstances but by long-delayed right”.

18. In Ghising (family life – adults – Gurkha policy) the Upper Tribunal accepted (in paragraph 56 of its determination) that the judgements in Kugathas had been “interpreted to restrictively in the past in order to be read in light of subsequent decisions of the domestic and Strasbourg courts”, and (in paragraph 60) that “some of the [Strasbourg] Courts decisions indicate that family life between adult children and parents will more readily be found, without evidence of exceptional dependence”. It went on to say (in paragraph 61):

“61. Recently, the [European Court of Human Rights] has reviewed the case law, in [AA v United Kingdom] [2012] Imm. A. R. 1), finding that a significant factor will be whether or not the adult child has founded a family of his own. If a child is still single living with his parents, he is likely to enjoy family life with them ...”.

The Upper Tribunal set out the relevant passage in the court's judgement in AA v United Kingdom (in paragraphs 46 to 49), which ended with this (in paragraph 49):

"49. An examination of the Court case-law would tend to suggest that the applicant, a young adult 24 years old, who resides with his mother and has not yet founded a family of his own, can be regarded as having "family life"."

19. Ultimately, as Lord Dyson M.R. emphasised when giving the judgement of the court in Gurung (at paragraph 45), "the question whether an individual enjoys family life is one of fact and depends on careful consideration of all the relevant facts of the particular case". In some instances "an adult child (particularly one who does not have a partner or children of his own) may establish that he has a family life with his parents". As Lord Dyson M.R. said, "[it] all depends on the facts". The court expressly endorsed (at paragraph 46), as "useful" and as indicating "the correct approach to be adopted", the Upper Tribunal's review of the relevant jurisprudence in paragraphs 50 to 62 of its determination in Ghising (family life – adults – Gurkha policy), including his observation (at paragraph 62) that "[the] different outcomes in cases that have superficially similar features emphasises to us that the issue under Article 8(1) is highly fact-sensitive".

20. To similar effect were these observations of Sir Stanley Burnton in Singh v Secretary of State for the Home Department [2015] EWCA Civ 630 (in paragraph 24 of his judgement):

"24. I do not think that the judgements to which I have referred contain any difficulty in determining the correct approach to Article 8 in cases involving adult children. In the case of adults, in the context of immigration control, there is no legal or factual presumptions as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in Kugathas did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings would not of itself justify finding of a family life. There has to be something more. The young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turned 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8."

15. In the context of a case such as the present one, the Court of Appeal went on in paragraph 39 to emphasise that "... the real issue under article 8(1) in this case, which was whether, as a matter of fact, the appellant demonstrated the family life with his parents, which had existed at the time of their departure to settle in the United Kingdom and had endured beyond it, notwithstanding their having left when they did."

16. There was further emphasis in paragraph 42 as to the need to consider as part of the assessment under Article 8(1) the relevant family history, stating that:

"42. Those circumstances of the appellant and his family, all of them uncontentious, and including – perhaps crucially – the fact that he and his parents would have applied at the same time fully to enter the United Kingdom and would have come to the United Kingdom together as a family unit at been able to afford to do so, do not appear to have been grappled with by the Upper Tribunal Judge under article 8(1). In my view they should have been. They went to the heart of the matter: the question of whether, even though the appellant's parents had chosen to leave Nepal to settle in the United Kingdom when they did, his family life with them subsisted then, and was still subsisting at the time of the Upper Tribunal's decision. This was the critical question under article 8(1). Even on the most benevolent reading of his determination, I do not think one can say that the Upper Tribunal Judge properly addressed it."

The evidence

17. The Appellant's written statement, signed and dated 2 February 2020 sets out her family, details of her childhood and her parents move to the United Kingdom. She states that her father is entitled to state benefits in the United Kingdom and able to save some money from this to send to the Appellant which she uses to buy food, clothes and for other household expenses. This money was sometimes transferred via other ex-Ghurka soldiers (for which there are no receipts) or from the Appellant's father during his visits in 2012 and 2019. The Appellant took care of her parents during these visits.
18. The Appellant is in constant contact with her parents, previously using international calling cards and since 2017, using *viber* and *Skype*. They ask how each other are and share advice to take care of themselves. The Appellant's parents are in poor health and both are said to need constant support and care which only a family member can provide. The Appellant states that it is the duty of elderly children to take care of their elderly parents, which she did when they were in Nepal and would continue to do if allowed to join them in the United Kingdom. The Appellant speaks English and would be able to learn new skills and obtain employment without being reliant on state benefits.
19. In his written statement signed and dated 23 January 2020, Mr Hari Prasad Rai (the Appellant's father) set out his family and work history and stated that in 2009 he heard about the new Immigration Rules for ex-Gurkha soldiers, following which he borrowed approximately £1380 from his neighbours and applied for visas for himself and his wife to enter the United Kingdom. Those applications were granted and there arrived here on 26 November 2010. In 2015, Mr Rai knew that dependent children under the age of 30 were allowed to join their parents, but no application was possible for the Appellant because she was already over that age. It was not until 2019 that Mr Rai knew that older adult dependent children were also being granted settlement and he then sent money to his daughter to apply for entry clearance.

20. Mr Rai sets out materially identical information to the Appellant in her written statement as to financial support given to her, communication, visits to Nepal and the health conditions of himself and his wife.
21. Mr Rai stated that he had always wanted settle in the United Kingdom, but the policy was not available to him at the time he retired from the Army, if it was he would have done so and would have been able to raise his family in the United Kingdom. Mr Rai is worried for his own future and that of the Appellant and wants her to join him in the United Kingdom so that they can all take care of each other and to complete the family.
22. A written statement, signed and dated 23 January 2020 was also available from Mrs Shabitri Rai (the Appellant's mother) which was in substance, materially identical to the written statement from her husband.
23. In the absence of hearing any further live evidence, I have had regard to the record of proceedings before the First-tier Tribunal as to the oral evidence given; as well as that recorded in the decision of the First-tier Tribunal in paragraphs 7 and 8. The Appellant's father was the only witness to give evidence. He adopted his written statement and stated that he and the Appellant's mother pay rent on the Appellant's property as she does not have any income. Mr Rai stated that the Appellant had been looking for a job but she did not have sufficient internationally recognisable qualifications for a well-paid job and the Appellant relied on her parents instead of taking a local job as the salary for this would be difficult for her to maintain herself on. There was no breakdown of the Appellant's expenditure.
24. The Appellant was previously given financial support via other ex-Ghurkas travelling between the United Kingdom and Nepal but there was no written statement from anyone on this. Finally, Mr Rai confirmed that he had visited the Appellant in Nepal and would do so again if the appeal were dismissed.
25. The documentary evidence submitted on behalf of the Appellant included, inter alia, copies of passports (showing leave to remain and travel history); the Appellant's father's certificate of service and official records; Appellant's education records; rental agreement between the Appellant, one other person and the landlord; medical records relating to the Appellant's parents; bank statements for the Appellant's parents from 2019; letter from Mr Bajracharya regarding loan to the Appellant in 2019 to be settled on return; schedule of financial remittances from September 2018 to January 2020 with accompanying receipts; copy *viber* and *Facebook* messages; and family photographs.

Submissions

26. On behalf of the Respondent, there was continued reliance on the refusal decision and the Entry Clearance Manager's review, in particular that there was no dispute between the parties that the Appellant could not satisfy the requirements of the Immigration Rules, nor the discretionary policy for Gurkhas discharged before 1 July 1997. The sole issue between the parties is whether there is continuing family life

between the Appellant and her parents in the United Kingdom to engage Article 8(1) of the European Convention on Human Rights. The Respondent accepts that if family life is engaged for this purpose, the refusal decision would not be proportionate, in the absence of any other countervailing factors to buttress the public interest and given the weight to be applied to the historic injustice in cases such as these.

27. In support of the submission that there was no continuing family life, the Respondent relies on the following facts:
- (i) the Appellant was 41 years old at the date of application;
 - (ii) the Appellant's parents chose to leave Nepal in 2010 in the full knowledge that the Appellant would not automatically qualify for settlement with them;
 - (iii) the Appellant has been apart from her parents for approximately 9 ½ years, with only two short visits in 2012 and 2019;
 - (iv) the Appellant's parents' written statements refer to the duty of parents to take care of the children until they are married, but fails to explain the delay in the application for entry clearance since 2015 when such an application became possible;
 - (v) there is no evidence of any care put in place for the Appellant;
 - (vi) there is a lack of evidence about what the Appellant does in Nepal with her time;
 - (vii) the Appellant is fit and healthy and there was evidence that she could not obtain employment if she wanted to. The appropriate inference is that she is doing something meaningful with her time in Nepal;
 - (viii) the *viber* and *Facebook* messages relied upon in evidence were in English (the correct format for evidence to the Tribunal), rather than Nepali or other ethnic language spoken in Nepal; are only of a relatively recent date; lack any supporting evidence of phone numbers to tie the documents to the Appellant and her parents and in the circumstances, little weight should be placed on them.
 - (ix) the evidence of financial remittances was limited, with no evidence of any financial support prior to 2018; since 2018 amounted to only nine remittances totalling £1175; and the financial remittances are not placed in context of the Appellant's financial circumstances either in terms of gross income or net income; nor is there evidence of the Appellant's parents means of support given their bank account is regularly overdrawn. There is no audit trail for the claimed undocumented remittances referred to. Further, the Appellant's claimed reliance on financial support from her parents is not reconcilable with taking in a lodger who pays two thirds of the costs of the accommodation which she has lived in for 30 years or with the statement that it is the duty of children to take care of their elderly parents.

28. In the written submissions made on behalf of the Appellant, it is stated in response that it was not understood that none of the factual findings of the First-tier Tribunal had been preserved, particularly in light of the lack of challenge to the evidence in the First-tier Tribunal and in these circumstances, it is submitted that the Respondent should not be permitted to make a retrospective attack on the evidence.
29. In any event, it is submitted that the evidence available to the Tribunal demonstrates that the Appellant's parents are providing her with support that is real, or effective, or committed, sufficient to meet the test for the engagement of Article 8(1) of the European Convention on Human Rights in accordance with the test in Rai, notwithstanding the Respondent's submissions on the evidence.
30. The Appellant highlights the unchallenged evidence before the First-tier Tribunal that the Appellant has no family members remaining in Nepal; that the Appellant's father would have relocated and raised his family in the United Kingdom upon discharge from the army if permitted to do so; that the Appellant is unmarried and unemployed and that there was evidence that the Appellant's parents pay her rent and she is completely financially dependent on them.
31. In addition, in assessing the evidence available, the Appellant relies on her father's good character, having been discharged from the army with an exemplary record of long service and the principle that if the Respondent has not challenged or disputed evidence in cross-examination, it is taken to be accepted. Fairness requires adverse matters to be put to a witness to respond to.
32. Overall, it is submitted that there is consistent written and oral evidence available showing that the Appellant made an application in 2019 when her parents were first aware of the policy changes made in 2015; that the Appellant has been financially supported by her parents since they came to the United Kingdom; that there is regular contact between the Appellant and her parents, including two visits (limited to that number due to cost and poor health). Notwithstanding the separation, there is sufficient evidence of the Appellant being provided with real or effective or committed support; added to which is the historic injustice of family life not being enabled to continue prior to 2015.

Findings and Reasons – the appeal

33. The Appellant raises as a preliminary matter, whether any findings of fact from the First-tier Tribunal had been preserved and whether the Respondent can at this stage make detailed representations the evidence which was before the First-tier Tribunal. At the oral hearing, there was discussion between myself and the parties as to what, if any findings had actually been made by the First-tier Tribunal and the possibility of whether what had been said demonstrated family life for the purposes of Article 8(1) of the European Convention on Human Rights. Mr Whitwell was unable to make any submissions regarding the evidence at the hearing because he was not in possession of the Appellant's bundle of evidence and I gave no indication of preserved findings. The written directions issued to the parties following the hearing similarly did not include any preserved findings of fact.

34. The difficulty in this case, as set out above, is that the First-tier Tribunal abjectly failed in its duty to make relevant findings of fact on the issues before it and some that were purportedly made, in relation to siblings in Nepal, were patently incorrect and most others were adverse to the Appellant. At its highest and on a generous reading of paragraphs 15 to 17 of the decision, the most that could be said about relevant findings of fact in the Appellant's favour, is that there was a record of receipts showing financial remittances to the Appellant since September 2018. This, together with references to the fact that the Appellant was born in Nepal and had lived there all of her life and that her parents chose to leave her there to come to the United Kingdom; are matters upon which there is in any event no dispute between the parties and which are irrelevant to the sole issue in this appeal as to the engagement of family life.
35. In these circumstances, the decision of the First-tier Tribunal was so poor that it was not possible to make any preserved findings of fact. It is of note that the submissions on behalf of the Appellant on this matter refer only to the evidence before the First-tier Tribunal and not to any specific findings in the decision; such that no specific findings are identified which the Appellant says were uninfected by the errors of law and should be preserved. For the reasons already given, it is impossible to identify any such findings which could have possibly been preserved and were not infected by the clear errors of law made by the First-tier Tribunal. For these reasons, this is a de novo assessment of the evidence before the Tribunal, following submissions from both parties on the same, which is in any event in the main, not significantly in dispute between the parties, the issue being whether the evidence is sufficient to support a finding of family life purposes of Article 8 (1) or not.
36. The sole issue in this appeal is as to the existence of family life for the purposes of Article 8(1), both at the time the Appellant's parent's left Nepal in 2010 and whether it has endured to the present time. As to the circumstances in 2010, it is not in dispute that until that time the Appellant was and had always lived with her parents in the same household in Nepal (save for intermittent periods when her father was away working) and was directly supported by them; such that I find family life existed at that point. There is also no dispute as to the Appellant's father's evidence that if he could have sought entry clearance to the United Kingdom upon discharge from the army or prior to 2009 he would have done so and if he had been able to do so, the Appellant may have been born here or may have been a minor or of an age where she was covered by the Immigration Rules or the policy in place prior to 2015. As such, this case is included within the accepted historic injustice to ex-Gurkha soldiers and their family.
37. As at the date of the hearing before the First-tier Tribunal (and although no updated evidence has been filed, there is no reason to suspect the position is any different as at today's date) there is evidence of contact between the Appellant and her parents and financial support from them to her.
38. The documentary evidence of contact is relatively recent and includes regular messages of a fairly routine nature and a record of video calls; together with visits to

Nepal in 2012 and 2019. There is nothing in the messages that have been produced to indicate any emotional dependency between the Appellant and her parents and the written statements only indicate contact of the sort that would normally be expected between adult children and parents, with care and affection between them, inquiry as to well-being and concern that each are looking after themselves and taking care.

39. The Appellant only expressly relies on the fact of regular contact rather than making any submissions relying specifically on the nature of the contact. Nor does the Appellant identify or rely on any specific examples of contact which could demonstrate support which was real, effective or committed to the Appellant or to her parents. There is nothing in the evidence available of contact to suggest any such support, nor to suggest any emotional dependency, it is simply routine communication between adult family members without more. Although there is no documentary evidence of contact between 2010 and the more recent messages from 2017/18 (save for the visit in 2012), it is reasonable to infer that the Appellant has kept in regular contact with her parents throughout this period; however, as above, this does not demonstrate the existence of family life for the purposes of Article 8(1).
40. As to financial support, the Appellant and her parents all state in their written evidence that the Appellant has been financially supported by her parents since 2010 and that she has no other source of income. There is however a significant lack of documentary evidence to support these statements and none which pre-dates September 2018. There are copies of receipts for nine financial remittances between September 2018 and January 2020 which average at £100 a month and a letter from a third party said to be a loan agreement pursuant to which he handed the Appellant £400 for the period January to April 2019 (although there was no evidence as to whether this was repaid, by whom or when). There is however no evidence at all from the Appellant as to her financial circumstances, with no detail of her outgoings (save for a rental agreement from 2015 stating that her monthly rent was 5,000 Nepali Rupees, approximately £31.60 at current exchange rates), no bank statements or supporting evidence of the Appellant's expenditure at all. In these circumstances, the Appellant has not established that she has no other source of income nor that she is solely financially dependent on her parents with the remittances of, on average, £100 a month covering all of her living and other expenses.
41. The Appellant's father stated that he gave the Appellant the money for her entry clearance application in January 2019, in the sum of \$2014 (approximately £1520 at current exchange rates) but there is no evidence of any such payment or of the Appellant's parents' means to do so given their bank statements regularly show low balances or are overdrawn; and given the evidence that they are, and have since arrival, been wholly supported by state benefits in the United Kingdom.
42. Prior to September 2018, there is no documentary evidence at all of any financial support to the Appellant from her parents and the written evidence of the witnesses does not go beyond mere assertion. There is, for example, not even a statement from the Appellant or her parents as to how regularly financial support was provided in this period, the amounts sent or when this started, no names of who is said to have

taken money to the Appellant in Nepal by hand and no written statement from any such persons (contrary to the one available from a payment in January 2019).

43. Whilst on the balance of probabilities I find that at the present time (and since late 2018) the Appellant has been financially supported by her parents, in a way which is sufficient to meet the relatively low threshold of real, or committed or effective support by means of relatively regular payments averaging around £100 a month; there is simply no evidence of the same in the period from 2010 to August 2018. I do not accept the mere assertions from the Appellant and her parents of continuing financial support for this period and this can not be inferred given the lack of any detail in their evidence as to this; the lack of any supporting documentation or written evidence from third parties and the lack of any evidence of the Appellant's parent's means to provide such support. The Appellant's father stated in his evidence that he borrowed approximately £1380 to apply for his and his wife's entry clearance in 2010 and whilst in the United Kingdom has been wholly dependent on public benefits; with the combination of debt and low income not providing a basis for the couple having the means to have provided the Appellant with regular support over the course of many years. I am not satisfied there has been financial support to the Appellant from her parents which has endured since they left Nepal in 2010 and up to September 2018 as there is nothing beyond a bare assertion of the same in the limited evidence available.
44. In considering whether family life for the purposes of Article 8(1) has endured since 2010, I have in addition to the contact and financial evidence considered above, I have also taken into account the Applicant's age at the date of application (41 years); the length of physical separation from her parents (now around 10 years, over 8 years at the date of application); the family history and historic injustice (including that but for this the Appellant is likely to have joined her parents in the United Kingdom previously); that the Applicant has not formed her own family unit (not being married or having children of her own) and has no other family members remaining in Nepal; the Appellant is in good health and could obtain employment (even if not at a salary that she could fully support herself, albeit there is no evidence of this). There is no evidence of any care or other needs.
45. I also take into account the complete absence of any evidence of what the Appellant has been doing in Nepal for the last ten years and that there is nothing to suggest that she has not continued to live her life and form an independent life for herself, particularly considering her age and length of time she has lived away from her parents, including since 2015 with another adult sharing the same property and the evidence of communication which includes reference to a group of other individuals whom it would appear the Appellant is in touch with as a wider social group.
46. In consideration of all of the evidence in the round, including the absence of evidence which it would be reasonable to expect in a case such as this; I find that the Appellant has not established that family life for the purposes of Article 8(1) has endured with her parents since they left Nepal in 2010. Although there is relatively recent evidence of financial support, the Appellant has not established that this has been in place

throughout the period and otherwise; there is nothing even cumulatively in the evidence to establish an ongoing relationship involving support which is real, effective or committed to the Appellant which has endured for nearly ten years. The Appellant is a middle aged woman who has lived independently in Nepal for a significant period of time, who is fit and healthy and able to obtain employment; and in relation to whom the majority of the evidence points to a normal relationship between her as an adult child with her parents without more.

47. For these reasons, Article 8(1) of the European Convention on Human Rights is not engaged and it is not therefore necessary to go on to consider whether the decision was a disproportionate interference.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and re-make it as follows:

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed *G Jackson*

Date 16th November 2020

Upper Tribunal Judge Jackson