Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/01273/2019
HU/01275/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 11 February 2021	**On 1 July 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ANJEELA RANA First Appellant
GANESH BAHADUR RANA Second Appellant
(anonymity direction not made)
and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellants: Mr M Moriarty, Counsel instructed by Everest Law
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellants against the decision of the respondent on 14 December 2018 refusing them leave to enter the United Kingdom as the adult dependants of their mother.

2. The appellants are sister and brother and they are the children of a former Ghurkha who has since died. Their mother is lawfully in the United Kingdom.

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3. Permission to appeal was given by Upper Tribunal Judge Lindsley in response to renewal grounds drawn by Mr Darryl Balroop of Counsel which are quite different from the grounds considered and refused by the First-tier Tribunal.

4. Judge Lindsley's reasons for giving permission are mainly set out at paragraph 3 of her decision and I reproduce that below:

> "The grounds of appeal contend, in summary, as follows. That the First-tier Tribunal erred in properly assessing whether the evidence before it shows family life between the appellants and their mother because the First-tier Tribunal did not acknowledge that the previous determination, which was rightly a starting point under Devaseelan, had been decided prior to the decision of the Court of Appeal in Rai v ECO, New Delhi [2017] EWCA Civ 320, which determined how Ghurkha family life cases should properly be decided, and in which it was found that there was a need only for real, effective or committed support, and not total dependency, and there were no need for exceptional circumstances. As the previous determination found that the appellants lived in the sponsor's home and that she continually sent money to them that suffices to meet the Rai test. It is also argued that there is insufficient reasoning in the current decision of the First-tier Tribunal".

5. This led to a very vigorous response from the Secretary of State in a letter dated 15 July 2020 that serves as a Rule 24 reply. I am satisfied from reading the letter that the position is not as simple as Judge Lindsley's grant might have suggested.

6. According to that notice reliance on the decision in **Rai** "to undermine the first Tribunal's decision is utterly misplaced".

7. The point is that the first Tribunal made reasoned findings. These included a reasoned finding that the sponsoring mother in the United Kingdom was very short of funds and it was hard to see how she could be making any significant financial contribution to the appellants. The First-tier Tribunal also noticed that documents supporting any kind of financial transfer showed that the first appellant was living at least for a time in Kathmandu rather than the village home owned by the sponsor and this was said to raise "further questions".

8. The letter pointed out that the First-tier Tribunal Judge expressly directed himself to different cultural practices and said that "I accept from a cultural perspective, unmarried children in Nepal, will typically continue to live in the family home". The Judge then went on to find strands of the evidence unsatisfactory. Additionally, the Judge could not see how there could be any kind of emotional support given the skimpy contact between the appellants and their mother. These points were all set out in a Decision of the Tribunal that was promulgated on 15 February 2017 and relied upon extensively by the First-tier Tribunal in dealing with this appeal.

9. Indeed, one of the complaints about the Decision is that the Judge of the First-tier Tribunal said almost nothing until the last paragraph of his Decision (penultimate paragraph of the Decision) that was analysis rather than quotation. The judge found the appellant "unbelievable" and this was factored into the First-tier Tribunal's decision in 2019 and then the judge found nothing to lead him to a different conclusion and he dismissed the appeal.

10. Mr Melvin's main point before me is that there were clear findings about the relationship in the first decision of the First-tier Tribunal and the First-tier Tribunal in 2019 was entitled to say there was nothing that undermined that evidence and unless the evidence establishes a relationship there is really no Article 8 claim to bring. He submitted that if there was no family life in 2017 there was no family life for the purposes of the appeal.

11. I disagree with Mr Melvin about that. I do not accept that family life cannot be re-established although the fact that it has disintegrated, if that is a fact, may go a long way to suggesting that there is no current family life or perhaps more importantly that the proportionality assessment should not be skewed by the desire to right an historical wrong if in fact the family life was a new consideration.

12. However, I cannot see a way around Mr Moriarty's submission that the 2017 "pre **Rai**" decision based its conclusions on the need for significant financial support which is no longer sustainable or why the equivocal findings or the findings of dishonesty necessarily undermined the claim that there was substantial contact by telephone and a continuing relationship in accordance with custom. There was really no consideration at all of the evidence in the form of statements from the appellants and there should have been. Clearly such evidence suffers the disadvantage of not being tested by cross-examination but I am satisfied that the culture shift in **Rai** which did not appear to be recognised by the First-tier Tribunal in 2019 makes the decision unsafe.

13. As I indicate at the beginning, I found this a much less straightforward decision than it first seemed. I do appreciate the points that the Secretary of State makes but I am not satisfied that the adverse credibility finding deals with the issue. It is not sufficient reason to reject the evidence that the appellants live substantially in the former family home or that they are still dependent emotionally on their mother, especially as they have not established families of their own. The evidence of financial support may not establish significant financial dependency but it could be indicative of continuing emotional dependency. This possibility has not been explored.

14. First-tier Tribunal Judges rightly seize upon **Devaseelan** as a starting point but it is not always the finishing point and for the reasons given I am satisfied the First-tier Tribunal have erred.

15. I do not find the outcome of the appeal against the respondent's decision to be obvious and, for the reason that I have given, I find that the appellants' case has not been considered properly.

16. I have decided in the circumstances it is right to set aside the decision of the First-tier Tribunal and direct the case be heard again in the First-tier Tribunal.

Notice of Decision

17. The First-tier Tribunal erred. I set aside its decisions and direct that the appeals be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 30 June 2021