



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09251/2018 (R)

THE IMMIGRATION ACTS

Remote Hearing by Skype for Business
On 18 May 2021

Decision & Reasons Promulgated
On 3 August 2021

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

DHAN BAHADUR GURUNG
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum, instructed by Everest Law Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

1. The hearing before me on 18th May 2021 took the form of a remote hearing using skype for business. Neither party objected. Neither the appellant nor his sponsor joined the hearing, but I was assured by Mr Jesurum that the appellant is aware of the hearing and is happy to the appeal to be heard in his absence. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly

the same way as I would have been if the parties had attended the hearing together. I was satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it is in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing will ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

The Background

2. The appellant is a national of Nepal. He is the son of a former Gurkha soldier who sadly passed away on 24th August 2005. Following the death of his father the appellant lived in Nepal with his mother. His mother left Nepal in May 2014, when the appellant was 28 years old, and came to the UK. She was granted settlement as the widow of a former Gurkha soldier. On 22nd November 2017, the appellant applied for entry clearance as the adult dependent relative of his mother. The application was refused by the respondent for reasons set out in a decision dated 8th March 2018. The appellant lodged an appeal and following a review by the Entry Clearance Manager, the respondent maintained the decision to refuse entry clearance. The appellant's appeal was dismissed for reasons set out in a decision of First-tier Tribunal Judge Hamilton promulgated on 29th April 2019. The appellant was granted permission to appeal to the Upper Tribunal by Upper Tribunal Judge Gleeson on 16th February 2021.

The decision of First-tier Tribunal Judge Hamilton

3. At paragraph [4] of his decision, Judge Hamilton summarised the appellant's claim that he was financially and emotionally dependent on his mother and that his

mother is still emotionally dependent on him. At paragraph [12] of his decision, Judge Hamilton refers to the evidence relied upon by the appellant and at paragraph [13], he noted the appellant is not in the UK and therefore did not give evidence. He noted the appellant's mother did attend the hearing and gave evidence through an interpreter. The judge's findings and conclusions are set out at paragraphs [25] to [51] of his decision.

4. Judge Hamilton records at paragraphs [25] to [27] of his decision that the appellant appears to accept that he cannot meet the requirements of Annex K. That is unsurprising since Annex K does not envisage an application for adult children in circumstances where the Gurkha soldier is now deceased. There remains a requirement for an examination under Article 8 and the relevant authorities are referred to in paragraphs [28] and [29] of the decision.
5. The judge accepted, at [31], that given the nature of Nepalese society and the fact that the appellant and his mother come from what appears to be a rural community, it is likely that family ties are close. He noted however that the appellant is now 32 years of age and has not been living with his mother for almost 5 years.
6. Judge Hamilton referred to the evidence relied upon by the appellant. He noted the appellant had attended an 'English Boarding School', where he had passed exams in commerce, accountancy, computer science, hotel management and marketing. Judge Hamilton referred to the thriving tourist industry in Nepal, and noted that despite his qualifications, the appellant claims he had returned to his home village and worked on the family farm with his mother over the course of the following 10 years. Judge Hamilton concluded that even if the appellant had been sharing the work with, or was being supervised by his elderly mother, it is reasonable to expect him to have learnt how to farm over the course of those 10 years. Judge Hamilton referred to the evidence of the appellant as set out in his witness statement that following the departure of his mother he could not manage the crops or the animals. He found the appellant's explanation as to how he had become dependent

on his elderly and infirm mother, to be “.. *unhelpfully vague*..” and in the absence of more detail, “..*implausible*..”. Judge Hamilton also referred to the evidence of the appellant’s mother that after she had come to the UK, the crops and livestock died. He said, at [37] and [38];

“37. ... However she does not provide any detail about why this happened. On the appellant’s own case, the sponsor has been back to Nepal since the family farm was said to have been devastated. Therefore she would have had the opportunity to see first-hand what had happened.

38. Furthermore, when she gave oral evidence, she was asked if the appellant still ran the family farm. She said that he used to do “*a little bit for living but now does nothing*”. When asked how she knew this, she said the appellant had told her on the telephone. She was then asked why he no longer worked the land. However she did not answer the question, merely repeating that the appellant used to work the land but no longer did so. When pressed for an answer she said, “*there is no work*” and confirmed that he lived on the farm but did not work on the farm.”

7. Judge Hamilton referred to the evidence before the Tribunal regarding the health of the appellant’s mother, and accepted that she has visited Nepal regularly, and noted that is consistent with her having a continuing relationship with the appellant. He said that it was also consistent with her wanting to visit and friends in a country where she had lived the majority of her life, albeit she claims to have no other family in Nepal. Judge Hamilton accepted, at [43], that the sponsor has been sending money to the appellant, and that is consistent with her claim to be supporting him financially. He also noted the evidence before the Tribunal regarding telephone contact and found it likely that the appellant and sponsor are in regular telephone contact. At paragraph [47] Judge Hamilton noted the force in the submissions made by the Presenting Officer that the large number of calls shown on his telephone records suggest that, at the very least, the appellant has a wide range of social contacts in Nepal, and that is consistent with his having developed an independent life, and, inconsistent with his claim to be living in isolation and poverty, although that in itself did not lead Judge Hamilton to conclude the appellant’s account as untrue. At paragraphs [49] and [50] Judge Hamilton concluded:

“49. Looking at all the evidence, I regret to say that the inconsistent and implausible aspects of the appellant’s evidence have led me to conclude that he is not being honest about his circumstances in Nepal either currently or at the time the sponsor came to the UK. It follows I am not satisfied the appellant has shown that he is financially dependent on the sponsor or that their relationship goes beyond the normal ties of love and affection that exist between a parent and their adult child.

50. It follows that he has been unable to show he can meet the requirements of Annex K or that he has established family life with his father (*sic*) and mother in the UK, within the meaning of Article 8. Therefore the refusal decision does not engage his or the sponsor’s family life rights under Article 8 of the ECHR. This means I do not have to consider issues relating to the historic injustice suffered by Gurkhas and their families.”

The appeal before me

8. Judge Hamilton found the Article 8 right to respect for family life was not engaged. The appellant advances three grounds of appeal. First it is said the decision of Judge Hamilton is vitiated by procedural unfairness. Second, the decision is vitiated by a misdirection of law and third, Judge Hamilton failed to consider the reciprocal ties between the appellant and his mother. At the hearing of the appeal before me, Mr Jesurum accepts that there is a degree of overlap in the grounds. He addressed grounds 2 and 3 first, before addressing ground 1. In this decision, I address grounds 1 and 2 together since they both concern the Judge’s assessment of the evidence and his conclusion that Article 8 is not engaged. I then consider ground 1.

Grounds 2 and 3; *Misdirection of Law & Failure to consider reciprocal ties*

9. The appellant claims that at paragraph [28] of his decision, Judge Hamilton cites the correct test by reference to the relevant authorities, but failed to apply the correct test. The appellant claims the question Judge Hamilton poses himself is whether the appellant has demonstrated “financial and emotional” dependence, and the test he applies is one of ‘interdependence’, which Judge Hamilton regards as having to be necessary due to the absence of alternatives. The appellant claims there is no authority for the proposition that any support must arise from ‘need’. The appellant also claims that in reaching his decision Judge Hamilton fails to consider

whether the emotional support provided by the appellant to his widowed mother engages Article 8(1).

10. Mr Jesurum submits the first question to be addressed is whether there is family life between the appellant and his mother. He submits factors such as whether the appellant is or is capable of working is irrelevant to that prior question of whether there is a family life for the purposes of Article 8(1), but is relevant to the assessment of whether the decision is proportionate. Mr Jesurum submits it might be said that the appellant is 'lazy' because he does not work, but that does not mean that he does not have a 'family life' with his mother. Mr Jesurum submits the lens through which Judge Hamilton analysed the facts is one of necessity, but that is not relevant when addressing whether there is family life. Furthermore, he submits, at paragraph [46] of his decision Judge Hamilton was searching for evidence that the appellant and his mother are 'interdependent', but the question is not one of interdependence but whether there is real, committed or effective support. He submits the evidence before the First-tier Tribunal was that the appellant is unemployed, single, continues to live in the family home and the land belongs to his mother. That is evidence of the support provided by the appellant's mother to him, in addition to the financial support.
11. Mr Jesurum submits that people that served the crown should not have to make the choice between continuing their family life in Nepal or in the UK, and the focus should be upon the injustice caused to the parent(s) more than the appellant. He submits that at paragraph [34], Judge Hamilton noted that despite the appellant's qualifications it is reasonable to infer the appellant may have returned to his home village and worked on the family farm with his mother because he may have felt it was his duty to assist his mother. At paragraph [48], Judge Hamilton noted the appellant's mother is not in good health and the question here is whether the appellant provides his mother with support. The sponsor should have been able to settle in the UK earlier and she was entitled to say that she is coming to the UK for benefits. Mr Jesurum referred to the vignette endorsed upon the sponsor's passport

which confirms she was granted a settlement visa valid from 15th April 2014 until 3rd October 2023. She therefore faced the unenviable choice of taking up settlement or to lose everything that goes with it. He submits it is now well established that it is an error of law to rely upon the choice that had to be made. The correct question was whether the on-going contact establishes that the appellant provides the emotional support required by his mother by reason of her health, her isolation (*she does not speak English*) and the difficulties that she has in managing on her own. The Judge was looking for dependence both ways, however, support one way or both ways, is sufficient.

12. Mr Jesurum submits taken together, the evidence before the Tribunal was such that it was sufficient to engage the Article 8 right to respect for family life.
13. In reply, Mr Tan submits Judge Hamilton has made a fact specific assessment of the appellant's claim. At paragraph [49], Judge Hamilton set out his overall conclusion having considered all the evidence before the Tribunal and found that the appellant is not credible about his circumstances in Nepal either currently or at the time the sponsor came to the UK. He submits Judge Hamilton has properly carried out a qualitative assessment based on all the evidence and was responding to the case as it was being advanced by the appellant before the First-tier Tribunal.
14. Mr Tan submits that at paragraphs [42], [46] and [48] of his decision, Judge Hamilton referred the evidence regarding the sponsor's visits to Nepal, their on-going communication and the evidence before the Tribunal regarding her health. The reference to 'interdependence', he submits, reflects the sponsors evidence, but the sponsor had scant knowledge of the appellant's circumstances. The evidence of the reciprocal emotional support provided by the appellant to his mother was limited. Mr Tan submits Judge Hamilton considered the evidence holistically and had in mind the relevant factors that all go to the prior question of whether Article 8 is engaged.

15. I reject the claim that Judge Hamilton's decision is vitiated by a 'misdirection of law' and that having cited the correct test, he failed to apply that test to his assessment of whether Article 8 is engaged. I also reject the claim that Judge Hamilton failed to have regard to the reciprocal emotional support provided by the appellant to his mother. Lindlom LJ referred to the relevant legal principles in Rai v ECO [2017] EWCA Civ 320:

"17. In Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31, Sedley L.J. said (in paragraph 17 of his judgment) 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 L.J. said (in paragraph 24 of her judgment) that the "relevant factors ... include identifying who are the near 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 L.J. said (in paragraph 14 of his judgment, with which Longmore and Aikens L.JJ. 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 circumstance 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 judgments in Kugathas had been "interpreted too restrictively in the past and ought to be read in the light of subsequent decisions of the domestic and Strasbourg courts", and (in paragraph 60) that "some of the [Strasbourg] Court's decisions indicate that family life between adult children and parents will 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 he is still single and 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 judgment in AA v United Kingdom (in paragraphs 46 to 49), which ended with this (in paragraph 49):

"49. An examination of the Court's case-law would tend to suggest that the applicant, a young adult of 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. emphasized when giving the judgment of the court in *Gurung* (at paragraph 45), "the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case". In some instances "an adult child (particularly if he 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 its observation (at paragraph 62) that "[the] different outcomes in cases with 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 judgment):

"24. I do not think that the judgments to which I have referred lead to 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 presumption 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 will not of itself justify a finding of a family life. There has to be something more. A 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 turns 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."

16. First and foremost, Judge Hamilton concluded that the appellant is not being honest about his circumstances in Nepal either currently or at the time his mother came to the UK. Judge Hamilton was not persuaded that the appellant is financially dependent on his mother or that their relationship goes beyond the normal ties of love and affection that exist between a parent and adult child. He found that the appellant has not established that his relationship with his mother constituted family life for the purposes of Article 8 and accordingly, he dismissed the appeal on human rights grounds.

17. In reaching his decision, Judge Hamilton had before him the evidence of the appellant as set out in his witness statement dated 15th February 2019. He also had before him the witness statement of the appellant's mother, who also gave oral evidence, and a number of documents from the Waling Municipality Office, together with evidence relied upon by the appellant showing regular communication between the appellant and his mother and of money being sent to the appellant by his mother.
18. Dependency, in the *Kugathas* sense, is a question of fact. The irreducible minimum of what family life implies remains that which Sedley LJ described as being whether support is real or effective or committed. The love and affection between an adult child and parent does not of itself justify a finding of a family life. There has to be something more. Each case is fact sensitive, and the existence of family life after an individual has achieved his or her majority is a question of fact without any presumption, either positive or negative, for the purposes of Article 8. Here, Judge Hamilton considered a range of factors that were relevant, and the main features of the family life relied upon. In his analysis of the evidence he noted features that point to family life for the purposes of Article 8;
- a. Given the nature of Nepalese Society and the fact that the appellant and the sponsor, are from what appears to be a rural community, it is likely that family ties are close. (*Paragraph 31*).
 - a. It is reasonable to infer that having obtained qualifications the appellant returned to his home village worked on the family farm with his mother; (*Paragraph 34*). Given the age and chronic health problems the appellant's mother lives with, it is reasonable to infer that if the appellant's account were true, he would have been primarily responsible for working the land and caring for the livestock. (*Paragraph 35*)
 - b. The oral evidence of the appellant's mother when asked if the appellant still ran the family farm or worked the land was that the appellant lived on the farm but did not work on the farm. (*Paragraph 38*)

- c. The appellant's mother is a relatively elderly lady who is not in the best of health. (*Paragraph 39 and paragraph 48*)
- d. The appellant's mother has visited regularly, and it is understandable that her visits since 2016 may have been shorter. (*Paragraph 41*). The fact that the appellant's mother visited Nepal regularly, is consistent with having a continuing relationship with the appellant. (*Paragraph 42*)
- e. The appellant's mother has been sending the appellant money consistent with her claim to be supporting him financially. (*Paragraph 43*)
- f. It is likely that the appellant and his mother are in regular telephone contact (*Paragraph 46*)

19. Judge Hamilton also noted the features that weigh against the appellant's claim to family life:

- a. The appellant is now 32 years of age and has not been living with his mother for almost 5 years. (*Paragraph 31*)
- b. The appellant attended an 'English Boarding School' in his home area and then studied in Kathmandu, where he passed exams in commerce, accountancy, computer science, hotel management and marketing. (*Paragraph 32*). The appellant obtained qualifications that would enable him to find work in the tourist industry. (*Paragraph 33*)
- c. Even if the appellant were sharing the work on the farm with, or being supervised by his elderly mother, it is reasonable to expect and to have learnt how to farm over the course of 10 years. (*Paragraph 35*)
- d. The appellant's explanation for why a young healthy man, with at least 10 years farming experience and qualifications that are likely to enable him to find other work, became dependent on his elderly infirm mother, who is herself short of money, is unhelpfully vague, and implausible. (*Paragraph 36*)
- e. The appellant's mother does not provide any detail about why the crops and livestock on the farm had died. (*Paragraph 37*).

- g. The fact that the appellant's mother visited Nepal regularly, is also consistent with her wanting to visit family (albeit she claims to have no other family in Nepal) and friends (*my emphasis*) in a country where she has lived the majority of her life. (*Paragraph 42*)
 - f. Although the appellant's mother has been sending him money it does not necessarily mean that he is dependent on the money she sends him or that he needs it in order to survive in Nepal. (*Paragraph 43*)
 - g. The telephone records suggest, at the very least, the appellant has a wide range of social contacts in Nepal and are consistent with his having developed an independent life and inconsistent with the appellant's claim to be living in isolation and poverty. (*Paragraph 47*)
 - h. Although the appellant's mother is not in good health, they have been separated for almost 5 years. She has the support of her brother and his wife in the UK.
20. Judge Hamilton gave a clear self self-direction as to the legal principles bearing on the question of whether Article 8 is engaged at paragraphs [28] and [29] of his decision. It is a question of fact whether the appellant had demonstrated that he had a family life with his mother, which had existed at the time of her departure to settle in the United Kingdom and had endured beyond it, such as to fall within the scope of Article 8. First and foremost, in reaching his decision, Judge Hamilton concluded the appellant is not being honest about his circumstances in Nepal either currently or at the time his mother came to the UK.
21. I am quite satisfied that in reaching his decision, Judge Hamilton took all relevant factors into account. He did not give undue weight to the fact that the appellant's mother left Nepal at a time when she would know that there was no guarantee the appellant would be able to join her. He had regard to the support that the sponsor has in the UK of her brother and his wife.

22. In reaching his decision, Judge Hamilton had regard to the evidence before the Tribunal regarding the financial and emotional support provided, the fact the appellant continued to live in family home and the money sent to the appellant. Insofar as Mr Jesurum has sought to identify extracts from the decision which he submits, suggest Judge Hamilton applied a test of 'interdependence' being necessary, or by searching for dependence arising from 'need', for the existence of family life, that in my judgement is to misread the decision and fails to give due weight to the adverse finding made by Judge Hamilton regarding the appellant's circumstances. In reaching his decision, Judge Hamilton was addressing the specific claims made by the appellant. A careful reading of the decision demonstrates that having considered the evidence in the round; Judge Hamilton was not satisfied that the appellant is being honest about his circumstances in Nepal. The findings and conclusions reached are neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence. The decision that the refusal does not engage Article 8 is one that was in my judgment open to Judge Hamilton. It is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The claim that Judge Hamilton erred in his analysis or failed to have sufficient regard to various factors, is mere disagreement with the reasoning.

Ground 1 Fairness

23. The appellant claims the respondent did not challenge the underlying facts, but disputed the conclusions to be drawn from the facts. The appellant claims Judge Hamilton unfairly made adverse findings in respect of matters that had not been raised by the respondent prior to the hearing, or during the hearing itself, leaving the appellant with no opportunity of influencing the Judge's mind on the point. Mr Jesurum submits it is now well established that a witness should be put on notice of the issues that arise, otherwise the witness may not know they need to provide an explanation. He submits Judge Hamilton was entitled to have regard to the fact

that the sponsor was unable to recall that the appellant could not support himself because for some reason, all the animals and crops on the family farm had died, but he submits, the witness must have fair notice and if it is going to be said that the witness is not telling the truth, that must be put to the witness. He submits that at paragraph [37] of his decision, Judge Hamilton noted that the sponsor claimed that after she came to the UK, the appellant told her over the telephone that the crops and livestock have died. Judge Hamilton states she did not provide any detail about why this happened. The sponsor confirmed in her evidence that the appellant lives on the farm. Mr Jesurum submits that if the Judge was concerned about the evidence, that should have been put to the sponsor and she should have been asked for clarification. He submits Judge Hamilton noted the sponsor's claim that she has no other relatives in Nepal, but nevertheless found that the visits to Nepal were consistent with her wanting to visit family. Mr Jesurum does not suggest that a Judge cannot form a view of the evidence given by a witness or that the Judge must ignore contradictions. However, he submits, these are adversarial proceedings, and the overriding objective requires the proceedings to be conducted fairly and it is necessary for the parties to set out what they do and do not accept. Mr Jesurum submits Judge Hamilton failed to give anxious scrutiny to the evidence before the Tribunal.

24. Mr Tan submits the Entry Clearance Officer and the Entry Clearance Manager had clearly set out the reasons for refusing the application for entry clearance. There was limited information before the decision makers and the evidence evolved and more evidence was provided in support of the appeal. There were questions asked by the Presenting Officer regarding the appellant's circumstances, and the appellant's representative had the opportunity to address anything that arose, either in examination in chief, or by way of clarification, in re-examination. Mr Tan submits the appellant had a proper opportunity to address the claim and there was no procedural unfairness.

25. It is useful to begin by considering the issues identified by the respondent prior to the appeal. The decision of the Entry Clearance Manager in particular, referred to the Decision of the Upper Tribunal in Ghising and said:

“I have considered whether this decision breached the appellant’s rights to private and family life (Article 8). I note that the Entry Clearance Officer also considered this at the time the original decision was made. The appellant is an adult; no evidence of communication commensurate with emotional dependency has been submitted with the appeal. No evidence of financial support that is real, committed and effective has been adduced. I do not accept that, without more than familial ties Article 8 is engaged...”

26. It was in my judgment clear that the respondent did not accept from the outset that Article 8 is engaged, and that was known to the appellant prior to the hearing. The appellant was aware of the case that he had to meet at the hearing of the appeal. I am quite satisfied that there was evidence before the First-tier Tribunal that was not previously before the Entry Clearance Officer or the Entry Clearance Manager and in that sense, the case did evolve with evidence. In my judgement, when read as a whole, Judge Hamilton carried out a proper analysis of all the evidence before him and records in his decision the evidence that he considered to be unreliable, giving adequate reasons for his decision.
27. It follows that in my judgement it was open to Judge Hamilton to dismiss the appeal for the reasons set out in the decision. An appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis of the evidence for that of the Judge by a narrow textual analysis which enables it to claim that the Judge below misdirected themselves. It is not a counsel of perfection. An appeal to the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. I am quite satisfied that the appeal was dismissed after the judge had carefully considered all the evidence before him and upon a proper application of relevant legal framework. The findings and conclusions reached cannot be said to be perverse, irrational or findings that were not supported by the evidence.

28. In my judgement the decision reached by Judge Lewis that family life was not established under Article 8(1) was a conclusion that was reasonably open to the judge, on the particular facts and findings that he made. I am therefore satisfied that there is no material error of law capable of affecting the outcome.
29. It follows that this appeal is dismissed.

Notice of Decision

30. The appeal is dismissed.

Signed *V. Mandalia*

Date; 20th July 2021

Upper Tribunal Judge Mandalia