



**Upper Tribunal**

**(Immigration and Asylum Chamber)  
HU/25068/2018 (P)**

**Appeal Number:**

**HU /25069/2018 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)**

**Decision & Reasons  
Promulgated**

**On 24 May 2021**

**On 3 June 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**TEJMAN LIMBU**

**AKALMAN LIMBU**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation**

**For the appellant: Everest Law Solicitors**

**For the respondent: Ms N Willocks-Briscoe, Senior Home Office  
Presenting Officer**

## **Background**

1. This appeal comes before me following the grant of permission to appeal to the appellants by Upper Tribunal Judge Martin, sitting as a Judge of the First-tier Tribunal, on 29 January 2020 against the determination of First-tier Tribunal Judge Sweet, dismissing this joint entry clearance human rights appeal. The decision was promulgated on 10 September 2019 following a hearing at Hatton Cross on 29 August 2019.
2. The appellants are brothers and Nepalese nationals born on 18 April 1979 and 3 June 1985. They seek to join their former Gurkha father, the sponsor, as dependent relatives. Their applications were refused on 8 November 2018 because the respondent was not satisfied that the requirements of Annex K or EC-DR of Appendix FM of the Immigration Rules had been met. The respondent also concluded that there was no article 8 breach because the reasons for their refusal outweighed the considerations of the historical injustice set out in relevant case law.
3. The appeal was heard by Judge Sweet who heard evidence from the sponsor and his wife and submissions from both parties. He concluded that the reasons for refusal did not warrant overturning, that the requirements of Annex K could not be met due to the ages of the appellants, that they were not emotionally dependent on the sponsor, that they had family in Nepal, were in good health and could find work there. He found that there was no family life beyond normal emotional ties and that the appellants had been living an independent life since their parents had come to the UK in December 2018. Accordingly, he dismissed the appeal.
4. The appellants sought permission to appeal on the basis that the judge had incorrectly applied the family life threshold in that he had failed to factor in the historic injustice element when assessing the matter. It is further argued that matters of proportionality were wrongly used to support the finding that family life did not exist. Permission was granted by the First-tier Tribunal.

## **Covid-19 crisis: preliminary matters**

5. The matter was due to be listed for a hearing on 1 April 2020 but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and the hearing was adjourned. Directions were sent to the parties on 17 July 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

6. The Tribunal has received written submissions from the respondent but no submissions have been received on behalf of the appellants. Their representatives have simply sent numerous emails to the Tribunal asking for the appeal to be re-listed. I now consider whether it is appropriate to determine the matter on the papers.
7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules).
8. I have had careful regard to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellant have been clearly set out and that the issue to be decided is straightforward and narrow. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellants and consider that a speedy determination of this matter is in their best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

### **Submissions**

9. By way of her submissions of 6 January 2021, the respondent does not oppose the appellants' grounds for permission and invites the Tribunal to determine the appeals with a fresh continuance hearing to consider whether there is family life between the appellants and their parents.
10. The appellants have not submitted any representations in response to the Upper Tribunal's directions. Their representatives simply repeat the request for the matter to be re-listed for an error of law hearing after the last adjournment.

### **Discussion and conclusions**

11. I have considered all the evidence, the grounds for permission and the respondent's concession as to the appellants' grounds. I am satisfied that for the following reasons the judge's determination contains errors of law and that his decision in that respect is unsustainable.
12. Although Judge Sweet self directed as to the historic injustice factor (at paragraph 25), his assessment and reasoning in his brief concluding paragraph (at 26) omitted any mention of that issue and nothing in his conclusions points to consideration of it when assessing family life. The grounds are right to complain that the judge has dealt with the issue of family life solely on the basis of the Kugathas principles and as though this were an ordinary immigration case. Further, the reasoning appears to go little further than an acceptance of the respondent's grounds for refusal and without any independent consideration of the evidence. The misapplication of the relevant threshold, the absence of adequate reasoning and the failure to factor in arguments made for the appellants all lead me to conclude that the judge's decision is unsustainable. No findings are preserved and the matter shall be decided afresh by another judge of the First-tier Tribunal.

### **Decision**

13. The decision of the First-tier Tribunal is set aside on human rights grounds. It shall be re-made by a judge of the First-tier Tribunal other than Judge Sweet.

### **Anonymity**

14. No request for an anonymity order has been made at any time and I see no reason to grant one.

### **Directions**

15. The First-tier Tribunal shall issue directions in due course.

Signed

**R. Kekić**

**Upper Tribunal Judge**

Date: 24 May 2021