



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/12162/2019  
HU/12164/2019

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 October 2021**

**Decision & Reasons  
Promulgated  
On 25 February 2022**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**CHITRA KUMARI LIMBU**

First Appellant

and

**SARITA LIMBA**

Second Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr V Ogunbusula, Counsel instructed by Direct Public Access

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer (by video link)

Interpreter: Mr S Gurung interpreted the Nepalese and English languages

**DECISION AND REASONS**

1. I see no need for, and I have not made, any order restricting publicity in this appeal.
2. As I explained when I found there was an error of law in the decision of the First-tier Tribunal and set it aside, the appellants are sisters. The First Appellant was born in February 1993 and so is now, almost, 29 years old. The Second Appellant was born in May 1991 and so is now 30 years old. They appeal the decision of the respondent, in each case on 21 June 2019, refusing them leave to enter the United Kingdom on human rights grounds.
3. This is a human rights appeal. The appellants must prove on the balance of probabilities any facts on which they need to rely and the respondent must justify any consequent interference and show that it is proportionate to a proper purpose.
4. The appellants wish to join their mother, Mrs Panch Maya Pandhak Limbu, in the United Kingdom. Mrs Limbu was issued with a settlement visa to enter the United Kingdom on 4 December 2014 and settled in the United Kingdom on 12 December 2014 with her husband who had served in the Brigade of Gurkhas. Notwithstanding the appellants' maturity it was their case that, consistent with the traditions and culture of Nepalese people, they continue to enjoy family life with their mother and that is a relationship that the United Kingdom is obliged to promote under Article 8 of the European Convention on Human Rights.
5. The appellants' mother's husband was not their father and the contrary has never been alleged. Sadly, their mother's husband died on 3 August 2015 in Basildon.
6. I consider first the statement of the First Appellant, Chitra. She identifies herself in the statement as the "Second Appellant" but I have listed the appellants in numerical order with regard to their appeal numbers and "Chitra" is the First Appellant.
7. The statement explains that she is the daughter of the late, sometime Rifleman, Limbu and Mrs Limbu. She gave her address for the statement as "care off" her solicitors in Essex.
8. She agreed with her sister's statement. She said how they had obtained DNA evidence to prove their maternity.
9. The man she regarded as her father had served in the British Army for twelve years from November 1955 until October 1968 and was deployed in India, Malaya, Hong Kong and Borneo. He returned to Nepal after his discharge and he worked as a farmer, his income being supplemented by a "meagre pension" from his military service.
10. She said her parents were given indefinite leave to enter the United Kingdom in December 2014 and arrived to settle the same month but her father died in 2015. I note that at the time of her parents being given indefinite leave to enter the United Kingdom, that is December 2014, the First Appellant was aged 21 years.
11. She asserted that she continued to live as her mother's dependent. She said that she and her sister were able to access her mother's widow's pension and that met her daily expenses in Nepal. The money was spent on food,

accommodation and clothing. She described herself as unmarried and unemployed.

12. It is difficult to get work in Nepal. This is because of there being few job opportunities and those that come being allocated on grounds of corruption, nepotism, favouritism and cronyism.
13. She asserted that her father had been the victim of historic injustice because he was not allowed to apply for settlement immediately on discharge from the army. He would have applied if that had been permissible and she would have settled.
14. She then said how she kept in touch with her mother by using phone cards, "Viber" and any other available communication means. I understand Viber to be an instant messaging service that permits communication by voice. I think it is right to describe it as making phone calls over the internet. She said that her mother sent them money "constantly" and also continued to make decisions for her as that was the way in Nepalese culture. Dependency lasts until marriage.
15. She was below 30 years old at the time of making the statement and had no family in Nepal to whom she could turn for help.
16. She also drew attention to her mother's means. She said her mother had council accommodation and received pension credit and housing benefit in the sum of £540 a month. In the event of the First Appellant joining her mother in the United Kingdom she would quickly find suitable employment because she was educated.
17. The Second Appellant, Sarita, made a very similar statement. The Second Appellant confirmed her sister's statement in all respects, asserting that "we all live jointly in one household under the sponsorship of our mother".
18. The appellants' mother, Mrs Panch Maya Pandhak Limbu, gave evidence.
19. She had made a statement. The bundle index is wrong and it appears at page 5 of the bundle. It is not signed. The witness was familiar with the statement but she did not adopt it in its entirety because there was disagreement with paragraph 4. However, she did accept that she had read the statements provided by the appellants and agreed with what they had to say. She confirmed that her late husband had served between 1955 and 1968 and added that his military conduct was "exemplary" on his discharge from the army. They had no money except what he had made from farming and a small pension.
20. With her husband she applied for indefinite leave to enter in December 2014.
21. In her statement she had said the appellants "were unable to apply" as they were studying but it would have better to have said that they did not apply because they were studying rather than suggesting that they could not apply. They were all worrying about advancing their education.
22. The witness said that she came to the United Kingdom in 2014 intending to settle and she wanted to bring her children. Before leaving Nepal the appellants lived with each other and the witness and her husband. They did not live with anyone else.

23. She left them with 2 lakhs rupees and sent money from the United Kingdom. As far as she knew they had no money except what she gave them. She sent money with friends.
24. When prompted she said she did have a pension in Nepal. It was paid to her but she told the appellants to use it and make the most of it. Additionally she sent them money. She said the pension in Nepal was paid to her bank account and she only had access to the account but the answers were rather confusing because she also said they were able to take money from the account.
25. She said they lived in rented accommodation and had access to her bank account to pay bills.
26. They were not married and had no work. It was very difficult to get work in Nepal.
27. She said that she was fond of her daughters and kept in touch with them by Messenger or she tried to telephone them. They spoke by telephone almost every day. Her daughters asked her for advice.
28. It was put to her that the closeness that she was describing might be hard to believe to someone used to the social mores of the United Kingdom. She said that the relationship was in accordance with their culture. Children remain close until marriage.
29. She was cross-examined by Mr Whitwell. She said that her husband who died in the United Kingdom was her second husband. He had two surviving children, a son and a daughter and they are in Hong Kong.
30. She had only been back to Nepal on one occasion since 2014 and she had returned sometime in the year.
31. She had used Western Union to send money and she had sent money with friends. She was asked to explain why there was no documentary evidence about financial transfers before the application. She accepted that was in fact correct but she did not explain why the paper trail did not precede the application.
32. She accepted that she did have an account with Standard Chartered Bank. She was asked about payments from the bank account. She was referred to page 269 in the bundle which is a statement of account with the Standard Chartered Bank.
33. Her attention was drawn to a statement in the supplementary bundle. She was asked about payments to someone called "Man Kumari Limbu". She said that man was her husband. The payment was dated 3 March 2020. Her suggestion was clearly inconsistent with the evidence that her husband had died in Essex in 2015. She said that it was maybe a friend, a different Limbu.
34. One of the cheques to Mr Limbu was for 10,000 Nepalese rupees. She was asked why she had paid so much money. She said that somebody had died and she was not sure in whose name it was sent, then she remembered it was for paying back money that she had borrowed.
35. It was pointed out that there were payments to the First Appellant. It was suggested that this undermined her claim that her children had access to her

account. She just said that they did. She was asked if she knew the process by which the appellants took money from the account. She did not.

36. She did know that they never worked in Nepal. She was emphatic that they never had a job. She had said they were still students at a college but she was uneducated and did not know the name of the college. It was put to her that this answer sat uneasily with her claim to make decisions in their lives. She speculated that they attended Mahindra College but she did not know.
37. She was then asked the whereabouts of their father. She said they did not have a father now. She was asked if she meant that he had died. She confirmed that was the case but when asked when he died she replied "maybe ten years" but certainly before she came to the United Kingdom.
38. Her attention was then drawn to page 59 of the bundle which appeared to be a translation or an English version of a rental agreement. She said that did indeed relate to where the appellants were now living but they moved around a lot. The first party of the tenancy agreement was a Mr Lal Bahadur Limbu. Limbu is the same name as the appellants and it was suggested that her first husband was still alive. She did not agree.
39. She was asked to illustrate the sort of decisions she made for her children. She said that she told them to keep studying.
40. I asked what they were studying and she could not answer.
41. She was not re-examined.
42. I have considered the documents before me.
43. There is a marriage registration certificate dated 17 September 2001 (page 45). It recorded the customary marriage of Pancha Maya Pandhak Limbu, page 48, to one "Man Prasad Limbu". The certificate is dated September 2001 and is, I accept, the certificate relating to the appellants' mother's marriage to the man they regarded as their step-father. The date of the marriage is 13 January 2001. The appellants' mother was then aged 48 years and their stepfather was aged 62 years.
44. The army pensioner's details, page 46, in the bundle show that the appellants' mother's husband's first wife died on 21 April 1992 and he remarried the appellants' mother on 13 June 2001. I appreciate that "January" is not "June" but the common abbreviations "Jan" and "Jun" are similar and I have assumed that the inconsistency in the dates is because of someone mishearing rather than anything discreditable. At that time the First Appellant was nearly 8 and the Second Appellant was 9.
45. I have considered the bundles. Perhaps the most helpful evidence for the appellants are the telephone logs which certainly indicate frequent contact between Sarita and her mother.
46. Mr Whitwell said that it was a case to be decided on quite narrow issues. He pointed out the age of the appellants. He recognised that cultural expectations in Nepal are not the same as in the United Kingdom and it was the reality of the relationship that mattered but although there was evidence of contact the only involvement in their lives was a rather vague reference to encouraging them to

continue studying by the part of their mother who did not even know the name of the college.

47. The sponsor chose to leave with her husband to come to the United Kingdom when the appellants were continuing their education. He was very careful to emphasise he was not suggesting that was determinative but not only were they left, the appellants' mother has never been back to see them and he submitted this was not indicative of strong family life. Rather, they had been apart for six years and ten months when he made his submissions.
48. Some money was remitted but the documentary evidence only indicates that starting after the application and it was insufficient to prove a level of dependency. The writing of cheques tends to suggest that the appellants do not get direct access to the bank account as was suggested.
49. He submitted this was not an historic injustice case. The appellants' mother's husband left the army in 1968 and they did not marry until 2001. If he had in fact gone to the United Kingdom on his discharge he would not have been there to be forming a relationship with the appellants' mother and indeed the appellants.
50. Mr Ogunbusula understandably made contrary submissions. He submitted there was real and effective support. I asked him what he said in response to Mr Whitwell's suggestion that bare figures are not much use, there has to be something that indicates the incomes and the value and buying power of the money that is spent. He said that it was quite clear monies were remitted and the children relied on them. He then said that the mother had a significant influence on the appellants. I asked in what way and he could only refer to her insistence that the appellants be educated.
51. He said that there was evidence of almost daily telephone communications.
52. He said it was plain that the children had not been acknowledged when the application was made by the appellants' mother and her husband to come to the United Kingdom but a proper explanation had been given for that. The children were involved in their education. He said that the evidence suggested the parents, then the mother, continued to pay for their daughters' rent and clothing and schooling. Dependency was established and dependency was a very strong indicator indeed of a remaining "family life".
53. In the Reasons for Refusal the point is made that when the application was made by the appellants' mother and stepfather to enter the United Kingdom the appellants were not declared as their children and they were not listed on the "kindred roll" submitted.
54. They clearly are the daughters of their mother but it is, I find, an intriguing omission. This suggests to me some breakdown in family communications about which the people involved have not been frank.
55. I note too the interviews with the appellants. The Second Appellant was asked about her accommodation and she gave an address in Nepal. She said she had lived at that address for eight years. That was an interview conducted in connection with an application dated 26 March 2019. The appellant Chitra, the First Appellant, gave exactly the same answer. A subsequent tenancy

agreement postdates the interview. There is no difficulty there but the claim that they each made of having lived at the same address for eight years does not sit easily with their mother's claim that they "keep changing".

56. This is a surprisingly difficult case to determine. I am very aware of authorities emphasising that I need to look at the situation as it is between the people alleging family life and that European cultural expectations are not much of a guide. I recognise too that it is often said, no doubt with some justification, that family life continues in the Ghurkha community until marriage. However, the evidence about the relationship is not strong. There is evidence of telephone calls, or other electronic communication, which is credible but not illuminating. It merely proves communication. It is a start but it does not reveal much about the relationship.
57. Their mother in the United Kingdom did not mention them when an application was made for her to come with her husband. The mother insists she provides guidance but could give no sensible evidence of the guidance she provides, referring only to telling them to study and not knowing the name of the college.
58. The evidence about the financial arrangements is very hard to understand. It is not a case where money is sent in a clearly disciplined way that can be easily traced. I am entirely satisfied that some was sent but that is not the same as establishing dependency.
59. In short, there are too many holes in the evidence.
60. I find the appellants have not established sufficient nexus to support a conclusion that there remains family life between the appellants' mother and her children.
61. To the extent that historical justice is relied upon I say it is of no value here. Mr Whitwell was clearly right when he said if the appellants' father had been allowed in they would not have been here at all. Their mother would not have come into the picture. I realise this is a very serious and no doubt disappointing decision but the evidence does not persuade me. The necessary foundation is not established and I am not satisfied there is family life. There is no interference that has to be justified.

### **Notice of Decision**

62. The appeals are dismissed.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 3 February 2022