



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/06912/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 28 April 2016

Decision & Reasons Promulgated  
On 3<sup>rd</sup> June 2016

Before

Mr H J E LATTER  
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

DEEPA GURUNG  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nepal, born on 28 August 1985. She appeals against a decision of the First-tier Tribunal dismissing her appeal against the respondent's

decision made on 10 February 2015 refusing her further leave to remain on the basis of her private and family life in the UK.

2. There was no appearance by or on behalf of the appellant. I am satisfied that the notice of decision has been properly served and in the absence of any explanation for her failure to attend that the proper course is to proceed with this hearing.

### Background

3. The background to this appeal can briefly be summarised as follows. The appellant first entered the UK on 21 September 2012 on a Tier 4 Student visa valid until 17 January 2014 and was then granted further leave to remain until 30 November 2014. On 6 November 2014 she applied for leave to remain on the basis of her private and family life but her application was refused for the reasons set out in the decision letter dated 10 February 2015. The respondent was not satisfied that the appellant could meet the requirements of para 276ADE(1). She was unable to show that there would be very significant obstacles to her reintegration into Nepal if required to leave the UK. She had spent all her formative years there and had been in the UK studying. This was not a direct path to settlement and the ties developed in two years' residence would not outweigh those she had established in Nepal.
4. The respondent went on to consider whether there were particular circumstances constituting exceptional circumstances justifying a consideration of article 8 outside the rules. The respondent noted that the appellant's mother and father resided in the UK but she was an independent adult. She had maintained a relationship with her parents prior to entering the UK in 2012 and had received financial assistance from them. That arrangement could continue as it did before her arrival in the UK. She had produced a regular army certificate of service which showed that her father had served in the armed forces until 1993 but this was not regarded as a determining factor in her application. The respondent found that there were no exceptional circumstances and the application did not fall for a grant of leave outside the rules.

### The Hearing Before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge accepted that the appellant's father had served in the Brigade of Gurkhas from 1976 to 1992. He was granted indefinite leave to remain in the UK on 12 September 2007 and on 19 March 2008 his wife, the appellant's mother, was also granted indefinite leave and she moved to the UK in 2009. The appellant had lived with her mother until she left for the UK and also with her brother in the family home in Pokahara. His brother had now married and was living in the home with his wife who is expecting a child. The appellant had also lived independently in Nepal when she was a university student.
6. The appellant is 30 years of age and has completed a BSc in Nepal and an MSc whilst in the UK and is currently working in a care home. The judge accepted that she was living with her parents in the UK and relied on them for financial support as she had

when in Nepal. The appellant said that she could not return to Nepal because it was culturally unacceptable for single women to live alone and she could not live with her brother. Her parents would be unable to provide her with any financial support and it will be difficult for her to find employment. Her mother had a bad back and she was helping her around the home.

7. The judge was not satisfied that the appellant would face significant obstacles integrating into Nepal as she had only spent three years living outside Nepal compared to 27 years living there. She had a home to which she could return. The judge was not persuaded there was any reason why her parents could not continue to provide her with financial support as they had for many years. She was also not satisfied there was any evidence beyond the appellant's assertion, that a person with her qualifications and UK work experience would not be able to obtain employment in Nepal.
8. The appellant had also relied on the fact that it was culturally unacceptable for her to live alone. There was no country background evidence to support this claim and was at odds with the appellant's own evidence that she had lived alone during her university course in Kathmandu. The judge also found that she would not have to live alone because she could return to the family home to live with her brother and his family.
9. The judge was therefore not satisfied that the appellant could meet the requirements of para 276ADE(1)(vi). She went on to consider the appeal under article 8 on the basis of the appellant's family life in the UK. The judge was satisfied that, although the appellant had lived for several years apart from her parents, they had financially supported her both then and since her arrival in the UK providing her with accommodation and day-to-day attention. In these circumstances family life was established. The judge accepted that removal would be an interference of such gravity as to engage the operation of article 8. It was in accordance with the law and for a legitimate interest. The issue for her was whether the respondent's decision was proportionate to a legitimate public aim.
10. The judge referred to s.117A and B of the Nationality, Immigration and Asylum Act 2002. She was satisfied that the appellant spoke English and was financially supported by her parents, but was not persuaded that this diluted the public interest in firm immigration control. The appellant could and should not have had any expectation that she would be able to remain in the UK given that she was here as a student. When considering proportionality the judge placed weight on the fact that her parents had chosen to leave Nepal and settle in the UK leaving their two children behind and that for several years she had managed to live there without her parents. She was also not persuaded the appellant would face financial hardship on return or that she would be without support. She said that the appellant did not meet s.117B(6) or the requirements of the Immigration Rules and these were factors which weighed heavily in favour of the public interest in her removal. She therefore found that removal would not be disproportionate to a legitimate aim within article 8.

### The Grounds and Submissions

11. The grounds argue that a proportionality assessment under article 8 cannot be dealt with in a perfunctory or formulaic way but requires a structured decision, that the decision is not in accordance with the law or the decision in Nagre [2013] EWHC 720 (Admin) and that it was necessary for the respondent to make an assessment of article 8 and as it had not been given independent consideration the First-tier Tribunal should have allowed the appeal on that basis. Finally it is argued that all relevant matters were not taken into account and that the appellant's private life included the pursuit of a business career.
12. Mr Tufan submitted that there had been no justification or necessity for the judge to consider article 8 in a freestanding way but in any event her decision on proportionality was properly open to her.

### Assessment of Whether the First-tier Tribunal Erred in Law

13. I am not satisfied that there is any substance in the grounds of appeal. The first ground argues that the question of determining proportionality should not be determined by reference to a threshold of some exceptionally grave interference with private or family life but should have proper and visible regard to relevant principles in making a structured decision and that article 8 proportionality could not be dealt with in a perfunctory or formulaic way. I am not satisfied that the judge did so. There is no reason to believe that she did not take all relevant matters into account. She considered the provisions of s.117B of the 2002 Act. She was right to note that the appellant could not meet the requirements of the Immigration Rules and that this was an important factor when considering proportionality. Her decision on that issue was properly open to her for the reason she gave.
14. The second issue in the grounds relies heavily on the decision in Nagre but fails to refer to the subsequent jurisprudence of the Court of Appeal which has confirmed that it is only necessary to consider article 8 outside the rules in circumstances where there is reason to believe that there are further matters properly to be taken into account not covered by the rules. The assertion made in the grounds is that the respondent had not acted in accordance with the law as no independent consideration was given to article 8 and that the appeal should have been allowed on that basis. There is no substance in this assertion as the decision letter properly considered whether there were particular circumstances warranting a grant of leave to remain outside the requirements of the rules. The respondent had been entitled to reach the conclusion that there were no such circumstances. In any event, once the matter was before the First-tier Tribunal on appeal it was for that Tribunal to make a decision on article 8. The judge did so reaching a decision properly open to her. The judge therefore did give independent consideration to the private life claim under article 8.

15. The grounds further argue that all relevant matters must be taken into account and that the judge had failed to do so and in particular the grounds argue that the appellant's private life included the pursuit of a career in business and that the decision to remove her was a sufficiently serious interference with that right. The evidence before the judge was that the appellant was working in a care home and that she would have difficulty in obtaining employment on return but that evidence was not accepted, the judge not being persuaded that a person with the appellant's qualifications and UK work experience would not be able to obtain employment. There is no reason to believe that the judge left any relevant matters out of account.
16. The judge assessed the appellant's claim based on private life under the provisions of the rules, finding that she had failed to show that she would face significant obstacles integrating in Nepal on return. There were no further issues relating to private life which would have justified further consideration outside the rules. In the light of the fact the appellant had been granted leave to enter as a student in 2012 and had previously lived for several years in Nepal without her parents and was clearly unable to meet the requirements of the rules based on family life, there is some force in Mr Tufan's submission that the judge need not have considered the matter further outside the rules. However, the judge cannot be faulted for erring on the side of caution by doing so. The decision turned on the judge's assessment of proportionality and as I have already indicated I am satisfied that she reached a decision properly open to her, having taken all the relevant matters into account. I am not satisfied that the judge erred in law.

### Decision

17. The First-tier Tribunal did not err in law and it follows that its decision stands.

Signed HJ E Latter

Dated: 1 June 2016

Deputy Upper Tribunal Judge Latter