



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

Appeal Numbers: HU/07851/2015  
HU/07856/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 October 2017**

**Decision & Reasons  
Promulgated  
On 07 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR SAMRAT RAI (FIRST APPELLANT)  
MR KSHITIJ RAI (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr. L. Tarlow, Home Office Presenting Officer.  
For the Respondents: Mr. A. Jafar, Counsel.

**DECISION AND REASONS**

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the

Secretary of State referred to as “the respondent” and Mr Samrat Rai was the first appellant and Mr Kshitij Rai as the second appellant.

2. The appellants are citizens of Nepal who appealed against the respondent’s decision made on 10 September 2015 to refuse to grant them indefinite leave to remain outside the Immigration Rules as the adult dependants of a veteran discharged before 1997 of the Brigade of Gurkhas. The appellants’ case is that they would have already been in the United Kingdom had the respondent not wronged the family and before the First-tier Tribunal Judge it was accepted by the respondent that family life had been engaged and it was therefore a question of proportionality under Article 8(2) of the European Convention on Human Rights (ECHR) taking into account the respondent’s legitimate interest in immigration control and the historic injustice which is a relevant feature of these Article 8 claims.
3. The appellants appealed following a hearing, and in a decision promulgated on 27 January 2017, Judge of the First-tier Tribunal Metzer allowed their appeals.
4. The respondent sought permission to appeal which was granted by Judge of the First-tier Tribunal P J M Hollingworth on 15 August 2017. His reasons for so doing are:
  - (1) “It is arguable that the judge has set out with insufficient particularity the application of the criteria pursuant to Section 117 in carrying out the proportionality exercise, despite the reference at paragraph 10 to taking into account the respondent’s legitimate interest in immigration control as reflected in Section 117, which observation is repeated at paragraph 12.
  - (2) It is arguable that the proportionality exercise has been affected.”
5. Thus the appeal came before me today.
6. Although Mr Tarlow relied on the two grounds put forward for seeking permission to appeal he acknowledged that in light of paragraph 56 of **Ghising and Others (Gurkhas/BOCs: historic wrong: weight) [2013] UKUT 567 (IAC)** the second ground could not be made out. Paragraph 56 of that decision states:

“56. The court said that the question to be decided was whether the historic injustice suffered by Gurkhas should be accorded limited or substantial weight in the Article 8(2) balancing exercise. It seems clear from a reading of the determination as a whole that it was their view, depending on all the facts, that it should be given substantial weight.”

7. He therefore proceeded to argue, as per the respondent's first ground, that the judge has provided inadequate reasoning for finding adult dependency as recognised in **Kugathas [2003] EWCA Civ 31**.
8. I do not accept Mr Tarlow's submission and for the reasons put forward by Mr Jafar I find that the judge has adequately reasoned why he came to the conclusions that he did which were open to be made on the individual facts of this particular appeal.
9. At paragraph 1 of the judge's decision it is recorded that the respondent's Counsel, Ms Davies, who appeared at the First-tier Tribunal hearing accepted that family life had been engaged and it was therefore a question of proportionality that fell to be considered taking into account the respondent's legitimate interest in immigration control and the historic injustice which is a relevant feature of the appellants' Article 8 claims. The judge found at paragraph 6 of his decision that the sponsor looks after the appellants' wellbeing and day-to-day expenses and that it was not open for the appellants to be able to apply under the Immigration Rules before 2009 under the respondent's old policy. The sponsor had also confirmed visiting the appellants each year until 2007 and has visited them since as has his wife. Further it was confirmed in the appellants' witness statements that they were both unmarried and not leading an independent life and that they were financially wholly dependent upon their sponsor. Beyond that (paragraph 11 of the decision) are findings that the property in which the appellants live is owned by their sponsor and that there is evidence from bank statements from 2007 to show consistent withdrawals in Nepal throughout the period from then by the appellants demonstrating their financial dependence upon their sponsor. At paragraph 12 the judge correctly sets out the **Kugathas** "test" before coming to conclusions that were open to be made on the evidence.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity direction is made.

Signed

Date 6 November 2017.

Deputy Upper Tribunal Judge Appleyard