



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

Appeal Number: HU/09060/2015

THE IMMIGRATION ACTS

Heard at Field House

On 6 November 2017

**Decision & Reasons
Promulgated
On 27 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

**MISS SAMIKSHA PUN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel
instructed by Kent Immigration & Visa Advice
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the SSHD against a decision of First tier Tribunal Amin, who allowed her appeal against a decision refusing her entry clearance.
2. The Respondent, to whom I shall refer as the Claimant, is a national of Nepal who was born on 1 January 1990. She made an application for entry clearance to settle with her father who is a former Gurkha. This application was refused on 21 September 2015. Her appeal against this

decision came before Judge of the First-tier Tribunal Amin for hearing on 10 January 2017. In a decision and reasons promulgated on 6 February 2017 Judge Amin allowed her appeal. He made a number of findings, in particular at [28]:

"I am satisfied on balance whilst the Appellant is an adult, she is emotionally and wholly financially dependent on her parents as supported by the oral and documentary evidence of the visits by the sponsor and his wife and remittances. I accept the evidence that contact is by phone. The unchallenged evidence is that the Appellant lived with her parents and siblings before they came to the UK. The Appellant is still reliant on her parents to survive on a day-to-day basis. The Appellant has not formed an independent family unit. I accept that the sponsor coming to the UK has not severed the family unit. I find the evidence satisfies the Appellant enjoys a relationship with her parents, which goes beyond normal emotional ties of a family, and therefore article 8(1) of the ECHR is engaged."

3. Thus, having accepted that the Appellant did not meet the requirements of the Immigration Rules or Appendix K of the IDI's Chapter 15, Section 2A 13.2 the judge found that the failure to admit the Appellant was not proportionate with regard to Article 8 of the ECHR.
4. The Respondent sought permission to appeal against that decision in time on 27 February 2017 on the basis that the judge had erred in failing to give adequate reasons for his decision: (1) as to why the Appellant's relationship with the Sponsor amounts to more than normal emotional ties bearing in mind the age of the Appellant and the length of time the family have lived apart, and (2) that the judge had failed to give adequate reasons as to why the Appellant can be said to overcome Section 117B of the NIAA 2002, as there is no explanation as to how the Appellant would be able to integrate into British society with no English language skills nor any prospect of income.
5. Permission to appeal was granted on 1 September 2017 by UTJ Martin for the following reasons:

"The first ground that the judge has failed to give adequate reasons for finding the Appellant to be dependent on her parents has little merit. However it is arguable that the Judge has erred by failing to take into account s.117B of the Immigration and Asylum Act 2002 when considering Article 8."

Hearing

6. At the hearing before me Mr Bramble on behalf of the Secretary of State sought, faintly, to rely on the grounds of appeal, the second limb of which concerned the manner in which the judge considered Section 117B of the NIAA 2002. However he accepted that the Claimant could speak English

and acknowledged at [32] it may be that the judge's reasoning could be considered sufficient. This provides:

"The Respondent has not given any reasons why admitting the Appellant would be against the public interest, or how it would undermine order in the United Kingdom. There is nothing to suggest that the Appellant has a bad immigration history or has a criminal record in Nepal that weighs in favour of the public interest."

7. In her response, Ms McCarthy sought to rely on the Rule 24 response drafted by her colleague and dated 30 September 2017 which asserted that the second ground of appeal was misconceived because it failed to take into account the fact that Gurkha adult dependent relative cases are subject to a wholly different set of principles and other Article 8 cases. In short, where the Respondent relies only on the interests of immigration control to resist an application for entry clearance in such a case and it is established that Article 8 is engaged and that the Sponsor Gurkha soldier would, save for the historic injustice preventing him to do so, had settled in the UK earlier *"the weight to be given to the historic injustice will normally require a decision in the Appellant's favour"* cf. Ghising [2013] UKUT 567 (IAC) per UTJ Taylor at [60].
8. It was further asserted that the matters that can properly count against the grant of entry clearance where Article 8 is engaged in Gurkha cases are limited to matters such as a particularly bad immigration history or criminal behaviour and that the argument that Section 117B can add anything in such a case was explicitly rejected by the Court of Appeal in Rai v ECO (New Delhi) v SSHD [2017] EWCA Civ 320 at [57].
9. Ms McCarthy submitted in light of the decisions in Ghising and Rai it was essentially up to the Respondent to show that once family life had been accepted as existing and enduring why entry clearance was not merited. Mr Bramble did not seek to make any response.

Decision

10. I find, in light of the submissions by both parties and having taken into account the careful and detailed decision of First-tier Tribunal Judge Amin as well as the grounds seeking permission to appeal and the grant of permission to appeal, I find no material error of law in the decision of the First-tier Tribunal Judge. It is the case that the judge made clear and unchallenged findings of fact in relation to the continuing existence of family life between the Appellant and her parents who now reside in the United Kingdom. The judge found the witnesses to be credible [18] and was satisfied that the Claimant is an adult dependent child of a Gurkha veteran [31]. He also expressly accepted the Sponsor's evidence that he would have settled in the UK if he had been allowed to after his discharge from the British army and therefore the Claimant would have been born in the UK but for the historic injustice. This is not disputed by the Secretary of State at the appeal hearing.

11. The judge further noted at [32] that the Respondent has not given any reasons why admitting the Claimant would be against the public interest or how it would undermine order in the UK. There is nothing to suggest that the Claimant has a bad immigration history or has a criminal record in Nepal that weighs in favour of the public interest. Therefore I find that the absence of any reference to Section 117B of the NIAA 2002 is not material in light of the particular facts of this case and the jurisprudence: *cf. Ghising and Rai* (op cit). I therefore uphold the decision of First-tier Tribunal Judge Amin with the effect that it is now for the Entry Clearance Officer to implement that decision.

Notice of Decision

The appeal by the Entry Clearance Officer is dismissed. No anonymity direction is made.

Signed Rebecca Chapman

Date 24.22.17

Deputy Upper Tribunal Judge Chapman