



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00073/2016**

Appeal Number:

HU/00074/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 22nd November 2017

On 2nd January 2018

Before

**THE HONOURABLE LORD MATTHEWS
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

Between

**(1) MISS RANA SHARMILA
(2) MR RANA ARJUN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER - NEW DEHLI

Respondent

Representation:

For the Appellant: Mr S Shepherd, Counsel instructed by N C Brothers & Co Solicitors

For the Respondent: Mr Chris Avery, Senior Presenting Officer

DECISION AND REASONS

1. This is an appeal by Miss Rana Sharmila and Mr Rana Arjun against the decision of First-tier Tribunal Judge Gibbs, promulgated on the 14th July 2017, to dismiss their appeals against refusal of their applications for entry clearance (hereafter, "the decision") to join their father (Mr Padam Bahadur Rhana, hereafter "the sponsor") and their mother in the United Kingdom.

2. The appellants are citizens of Nepal. The first appellant was born on the 5th June 1986 and the second appellant on the 12th April 1989. The sponsor was formerly a soldier in the Brigade of Gurkhas in the British Army. In recognition of that service, he and his wife were granted settled status on the 21st April 2011. They entered the United Kingdom on the 12th June 2011 and have resided here ever since. The appellants made applications to enter the UK at the same time as their parents. However, their applications were refused because they did not meet the requirements for an 'adult dependent relative' under Appendix FM of the Immigration Rules, and because the respondent did not accept that they qualified for entry clearance by reference to their rights under Article 8 of the Human Rights Convention.
3. In giving reasons for dismissing their appeals, the judge stated that having considered the totality of the evidence she was not satisfied that the facts as they had been presented to her at the hearing were reliable. She found that the sponsor had attempted to elevate the appellants' level of dependency upon him in order to bolster their chances of succeeding in their appeals [paragraph 12]. She noted that the sponsor had made no mention of his eldest son ('Mahender') in his witness statement, other than to say that he lived in Nepal with his own family. He had perpetuated this impression during his evidence-in-chief by saying that Mahender lived "separately". However, in cross-examination it had become clear that the appellants lived with their elder brother and his family on the family farm, which was where the sponsor and his wife had lived prior to leaving Nepal [paragraph 14]. It also emerged in cross-examination that the Mahender worked as a primary school teacher as well as on the farm. The sponsor had initially claimed that the appellants did not work on the farm. However, he later accepted that they sometimes did help in the fields, adding that they did not wish to do so [paragraph 15].
4. The judge was satisfied that it was likely that the appellants worked on the farm in order to provide themselves with an income as well as food for their daily living. It was not credible that Mahender would undertake two jobs whilst the appellants did nothing [paragraph 14]. She noted that the letters that had been submitted from the 'Office of Village Development Committee' did not refer to the fact that the appellants lived on the farm with their elder brother and his family. She therefore concluded that these were not documents to which she could attach weight [paragraph 16]. Whilst she acknowledged that there was evidence to show that the sponsor sent money to Nepal, she was not satisfied that this was anything more than the sponsor providing his three children and two grandchildren with additional spending money rather than constituting essential financial support [paragraph 18]. Equally, whilst there was evidence of communication between the UK and Nepal, it was probable that all family members participated in that contact [paragraph 19].
5. Given her primary findings (above) the judge was not satisfied that the appellants were either emotionally or financially dependent upon their parents in the UK [paragraphs 17 and 20]. The existence of family life

between them had not therefore been established and the appellants' claim under Article 8 therefore failed at the first of the five-stage analysis of Lord Bingham in R v Secretary of State for the Home Department, ex parte Razgar [2004] UKHL 27 [paragraph 20].

6. Whilst drawing our attention to the fact that the judge had not rejected the evidence of the sponsor in its totality, Mr Shepherd acknowledged that the judge had made adverse credibility findings and did not invite us to go behind them. He nevertheless submitted that the judge had failed to have regard to the following factors:
 - (1) The period of, and reasons for, the appellants' separation from their parents.
 - (2) Whether there was, as a matter of fact, family life at time of the parents' departure and whether it had endured beyond it.
 - (3) Whether the appellants had established a family life of their own.
 - (4) The fact that the parents had visited appellants for 90 days in 2013.
 - (5) The point at which family life ceased.
 - (6) The extent to which the circumstances of the individual appellants were different, with particular regard to their differences in ages and the fact that the first appellant was an unmarried female.
7. We do not accept those submissions. Whilst the period of separation of an adult child from his parents may be relevant to the factual question of whether family life has continued to the present day, we cannot see that the reason for the separation is material to this issue. On our reading of the decision in Ghising (Ghurkhas/BOCs; historic wrong: weight) [2013] UKUT 00567 (IAC), the fact that the that an adult child has been prevented from following his or her parents due to an historic injustice or a change in policy is a factor relevant to the question of the proportionality of a decision that prevents family life (where it is found to exist) from being enjoyed in the United Kingdom. An historic injustice or change in policy is thus no more relevant to the question of whether family life exists than is the fact that the decision of the parents to live separately from their adult children was one made through choice rather than necessity [see Jitendra Rai v Entry Clearance Officer - New Dehli [2017] EWCA Civ 320].
8. The question of whether family life had endured beyond the initial separation between parent and adult child to the present day is obviously central to a finding that it continues to subsist. We do not however accept Mr Shepherd's submission that it was necessary for the judge to identify a precise point in time between separation and the present at which family life ceased to endure. Sometimes the cessation of family life between a parent and child will be marked by a particular event, such as the marriage of the child or the child leaving the parental home in order to take up employment. On other occasions it will result from an accumulation of changing circumstances that has gradually led to the loosening of emotional and financial ties. The greater the gap between meetings, for example, the more difficult it may become to establish that family life has continued to endure to the present time. In such circumstances it may not be possible to identify a precise temporal

dividing line between 'family life' and the usual bonds of mutual love and affection existing between adult family members who no longer reside in the same household. As Stanley Burton LJ observed in Singh v Secretary of State for the Home Department [2015] EWCA Civ 630, "it all depends on the facts".

9. Whilst the fact that an adult child has started a family life of his own will in all probability lead to the fact-finder concluding that family life with his parents has ceased to endure, we do not accept that its absence is a necessary indicator of continuing family life. It is perhaps stating the obvious to say that single adult children are also capable of leading independent lives. It all depends on the particular facts and circumstances.
10. With respect to the visit to the appellants that was made by the sponsor and his wife in 2013, the judge was clearly aware of this visit given that she refers to it at paragraph 5 of her decision. However, given also that she appears to have believed that it had taken place very much more recently than was in fact the case (the visit was in 2013 rather than 2015) we do not consider that her failure to factor it into her overall assessment could have resulted in a more favourable outcome for the appellants.
11. Finally, we are not persuaded that it was necessary for the judge to attach significant weight to the differences of age and sex as between the appellants given her finding (which is not challenged) that they were both now working on the family farm in order to provide for their food and a personal income. The judge was thus entitled to conclude that their current circumstances were similar if not identical.
12. We conclude by noting that the truthfulness and accuracy of the sponsor's evidence concerning the appellants' current circumstances in Nepal was central if not critical to the success of these appeals. Given the unchallenged finding that the evidence of the sponsor had been exaggerated and was consequently unreliable, we consider that the judge was almost bound to conclude that current family life was not established.

Notice of Decision

13. The appeal is dismissed.

No anonymity direction is made.

Deputy Upper Tribunal Judge Kelly