



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: HU/04050/2016

HU/04046/2016

THE IMMIGRATION ACTS

Heard at Field House

On 26th April 2018

Decision &

Promulgated

On 9th May 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR DHANENDRA RANA

MISS SAMUNDRA RANA

(ANONYMITY DIRECTION NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jaja of Counsel

For the Respondent: Mr Duffy

DECISION AND REASONS

Introduction

1. The Appellants born on 4th March 1982 and 5th February 1975 respectively are both nationals of Nepal and are related as brother and sister. They appealed against the Respondent's decision dated 15th January 2016 to refuse to grant them entry clearance as the dependants of a former Gurkha soldier.
2. Their appeal had been heard by Judge of the First-tier Tribunal Mace sitting at Hatton Cross on 16th November 2017. He had allowed the appeals on human rights grounds.

3. The Respondent had made application for permission to appeal that decision on 3rd January 2018. Permission to appeal was granted by Judge of the First-tier Tribunal Boyes on 6th February 2018 on the basis it was arguable that the judge had reached conclusions outwith any evidential basis.

Submissions on Behalf of the Respondent

4. Mr Duffy submitted in terms of the Grounds of Appeal that had been advanced by the Respondent and said that this was essentially an extension of family life beyond a normal point.

Submissions on Behalf of the Appellant

5. It was said that when looking at the case of **Rai** that it was not essential that the parties should be living in the same country for family life to be applicable. The judge had to some extent followed the previous judge's decision that there was family life applying the principles of **Devaseelan**. It was submitted that family life was enduring at the time the Sponsor left Nepal and had endured beyond and to that extent the judge had followed the guidance in **Rai** that there was family life prior to the parents leaving and that family life still endures. It was further said that this was a case where the Sponsor had demonstrated that he had made application as soon as possible.
6. At the conclusion I reserved my decision to consider the submissions in evidence. I now provide that decision with my reasons.

Decision and Reasons

7. The judge had recognised that there had been a previous appeal which had been dismissed. He correctly applied the principles in **Devaseelan** and regarded those findings made by the judge on the earlier appeal as his starting point. He correctly noted that in terms of Gurkha cases, that appeal had been based on the interpretation of the law as it then stood. He provided at paragraph 20 his reasons for departing from that starting point given the changes in the law and case law. That was a decision that he was entitled to make.
8. Both Appellants are adult dependent children. They did not fall within Annex K. The judge had correctly looked at the existence and strength of any family life. He had considered amongst other matters the following:
 - (a) The Sponsor Gurkha father had made application for the Appellants to join him in 2007 together with his wife. That was shortly after he had

arrived in the UK. He had pursued an appeal in that matter and had then made a further appeal in 2010.

- (b) The Appellants have been financially dependent upon him their whole life. Firstly, he having funded their education including continuing further education and secondly continuous financial support to the current time by remittances from his pension.
 - (c) There had been evidence of the financial ongoing support provided to the judge.
 - (d) There was evidence of frequent visits to Nepal to visit the Appellant.
 - (e) Neither Appellant was married, had children or had set up their own independent family unit.
 - (f) He heard and accepted the evidence of the parents of the depth of emotional support and family life that existed.
9. The judge had applied the correct law and taken account of the cases pertinent to Gurkha cases. Significantly at paragraph 31 having identified for reasons provided that family life existed in his assessment of proportionality he referred to the Court of Appeal case of **Rai** and applied those principles; namely that having found Article 8 was engaged and but for the historic wrong an Appellant would have settled in the UK long ago that would ordinarily determine the outcome of the proportionality assessment where the matters relied upon by the Entry Clearance Officer consisted solely of the public interest in maintaining a firm immigration policy. The Respondent does not and cannot point to any other factors. The judge had noted they spoke English, were well-educated and it should also be noted that they have a brother currently serving in the British Army like his father before him.
10. In summary the judge heard the evidence, considered it carefully, made findings of fact backed by reasons and followed the guidelines within case law that applies to the adult dependent children of former Gurkha soldiers. He had exercised his discretion not inconsistent with the direction of travel in such cases. He was entitled to reach the conclusion that he did and it is incorrect to assert as was asserted within the Grounds of Appeal “no right-minded person could reach that conclusion” because it cannot be said that in exercising his discretion the judge had strayed beyond case law or had reached a conclusion so unreasonable that no other judge hearing the case would have reached that conclusion. There was no material error of law in this case.

Notice of Decision

11. I find no material error of law was made by the judge in this case and uphold the decision of the First-tier Tribunal.

No anonymity direction is made.



Signed

Date 8/5/18

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable

Signed 

Date 8/5/18

Deputy Upper Tribunal Judge Lever