



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/04954/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 9 March 2018

Decision & Reasons Promulgated  
On 11 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

YOGESH RAI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, NEW DELHI

Respondent

Representation:

For the Appellant: Mr R Jesurum, of Counsel  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

REMITTAL AND REASONS

Introduction

1. The Appellant is a citizen of Nepal. He was born in February 1990 (there is some uncertainty around the day he was born). He applied for entry clearance to join his father Syam Rai who is an ex-Ghurkha soldier in the British Army with an exemplary military record. The application was refused by the Entry Clearance Officer ("the ECO") in a decision dated 19 January 2016.
2. The Appellant appealed against the decision of the ECO. His appeal was dismissed by First-tier Tribunal Judge Norris ("the judge") in a decision promulgated on 6 July 2017. Permission to appeal was granted to the Appellant by Designated First-tier Tribunal Judge McDonald on 15 January 2018.

### **The Findings of the First-tier Tribunal**

3. The judge heard evidence from the Appellant's father and mother and submissions from those representing the respective parties. The judge comprehensively set out the law, the Appellant's claim, the contra case, the evidence and submissions. The judge's findings are set out at [7.1] to [7.6]. The judge recorded discrepancies between the father's evidence that the rooms in the family home were not rented and that of the mother stating that they were. The judge found the Appellant was financially independent by reason of rental income from rooms in the family home, which he managed, and by the fact that the father only visited him three times between 2010 and 2013, followed by an 18-month gap until the next visit in 2015 or since May 2016. The judge found the evidence did not support the assertion that there was regular contact between the Appellant and his parents. The judge thus found that the evidence pointed towards the Appellant being independent of his parents and concluded that the support between them was not "real, effective or committed" so as to "engage Article 8". Accordingly, the appeal was dismissed.

### **The Grounds of Appeal**

4. The grounds are essentially a challenge to the decision on the basis that it is unsound; there was a failure to adequately consider the evidence and to apply legal principles. Permission to appeal was granted on all grounds.

### **Discussion**

5. I have considered the submissions of the representatives. Mr Jesurum relied on his comprehensive grounds. While Mr Duffy in his submissions sought to defend the judge's decision, I am satisfied (just) that the judge in an otherwise well-reasoned decision materially erred in law.
6. Mr Duffy rightly identified that the appeal turned on the issue of whether family life existed between the Appellant and his parents. The judge concluded that Article 8 was not engaged at [7.6.]. He identified various deficiencies in the evidence that he concluded pointed towards an adverse conclusion. In particular, the judge noted inconsistencies between the evidence of the father and mother in respect of whether rooms in the family home occupied by the Appellant were rented. The father stating that they were not and the mother stating that they were. These deficiencies are acknowledged by Mr Jesurum. I have some difficulty in accepting Mr Jesurum's submission that the judge did not take into account other possible alternatives that could explain the discrepancy, such as, confusion or mistake, or the positive good character of the Sponsor. The judge at [7.4.7] had in mind the Sponsor's distinguished military record and gave adequate reasons for finding that the discrepancy could not be explained by the mother's illiteracy. Nonetheless, while I consider that the judge was entitled to give weight to the discrepancy, I agree with Mr Jesurum that the receipt of rental income was not axiomatic of the Appellant's independence.

7. A balanced view was required of all the evidence, including an adequate assessment of whether the evidence of rental income may point the other way. I am not satisfied that that approach was adopted by the judge in this case.
8. There is force in the submission of Mr Jesurum that, even if, the judge was entitled to conclude that the Appellant received rental income, the judge failed to consider whether this was material to the issue of dependency. Given that there was no dispute that the rooms the Appellant managed did not belong to him, but to the father, the rental income was capable of being categorised as a means of support by the Sponsor and, while this argument was advanced in submissions by Mr Jesurum before the judge [6.12], it has not been considered adequately or at all.
9. I also accept Mr Jesurum's submission that there has been a failure to adequately consider the mother's evidence of emotional ties. In her witness statement the mother refers in some detail to the stress caused to her and to the Appellant by separation. This evidence supports the evidence of emotional ties and was not challenged before the judge. At [5.25] the judge summarised the evidence in this respect but does not factor this unchallenged evidence into his assessment.
10. Mr Jesurum has further pointed to evidence of calling cards that were before the judge demonstrating that regular contact was maintained with the Appellant by the parents and said to be supportive of the claim of emotional dependency. Such evidence can support the claim that calls were made to the Appellant every two to three days and was relevant, given the frequency, to the question of dependency. The judge noted the difficulties with the quality of the evidence and noted that he could not discern from the mobile telephone records to and from whom the calls were made [7.4.8]. He thus proceeded to reject the evidence as supportive of the contention of regular contact. The fact that the calling card evidence did not identify the maker and recipient of the calls was not sufficient cause to reject them: see Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 41.
11. Taking these factors together, I am of the view that there has not been an adequate examination of the evidence. I cannot rule out the possibility that had such adequate consideration been given, that a judge properly directing himself may have reached a different conclusion. The inadequacy of the analysis means that a material error of law was made by the judge such that the decision needs to be set aside, and I do so.
12. In the circumstances, it is not necessary to deal with the other ground.
13. I find the judge materially erred in law, and his decision cannot stand.
14. The parties agreed that the appropriate course in the circumstances was to remit the appeal to the First-tier Tribunal to be heard afresh.

### **Notice of Decision**

The First-tier Tribunal erred in law.

I set aside the decision of the First-tier Tribunal.

By agreement of the parties this matter is remitted to the First-tier Tribunal for a rehearing before a judge other than Judge Norris.

No anonymity direction was sought or is made.

Signed

Dated

24 May 2018

Deputy Upper Tribunal Judge Bagral