



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

Appeal Numbers: HU/13033/2016
HU/13041/2016
HU/13043/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 6th November 2018**

**Decision & Reasons
Promulgated
On 29th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**BINOD [T] (FIRST APPELLANT)
NEER [M] (SECOND APPELLANT)
[E T] (A MINOR) (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Turnbull, Counsel, Asher & Tomar Solicitors

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nepal. They were born respectively on 3rd July 1982, 4th January 1987 and 23rd August 2014. The first and second Appellants are husband and wife. The third Appellant is the child of the first and second Appellants.

2. This matter came before Judge of the First-tier Tribunal Spicer sitting at Taylor House on 27th November 2017. Following the refusal of the judge's decision an appeal was made to the Upper Tribunal and that appeal led to a grant of permission by Designated First-tier Tribunal Judge Macdonald who noted that the grounds of application raised an issue of what was a new matter under Section 85(5) of the 2002 Act and also whether the judge was required to direct the question of consent to the Respondent. That appeal came before me sitting at Field House on 22nd June 2018. In a decision and reasons promulgated on 27th July 2018 I found that there was no error of law in the approach adopted by the First-tier Tribunal Judge to the decision under Article 8 and that that decision would stand. However, I did conclude that the judge had failed to give due and proper consideration of the claim for humanitarian protection and therefore, so far as that decision was concerned, the finding of the First-tier Tribunal Judge was set aside. As a result, I gave directions hereinafter inviting the parties to agree the process upon which any forthcoming appeal relating to humanitarian protection should be based, bearing in mind that it had not been an issue that had been dealt with by the judge and bearing in mind that the matter would be retained by myself in the Upper Tribunal as I had found an error of law on only part of the decision.

3. Written submissions were made by the Secretary of State by way of letter dated 20th September 2018 and following that, on 12th September 2018, in a decision and reasons latterly promulgated on 25th December, I ordered:
 - (1) that there be leave to admit the new matter of the effect of the earthquake of 25th May 2015 as creating a potential claim pursuant to Article 3.
 - (2) that the appeal would stand retained in the Upper Tribunal reserved to myself on the first available date 42 days hence; and
 - (3) that there be leave to either party to file and serve a bundle of such objective/subjective evidence on which they seek to rely at least seven days prior to the restored hearing.

4. It is on that basis that the appeal is returned before me. I attended today expecting a full bundle of evidence and the attendance of the Appellants. It is appropriate to set out the recent historical developments in this matter. On 31st October 2018 the Appellants' instructed solicitors Asher & Tomar wrote to the Tribunal:

"We understand from our client that he has been attempting to obtain further evidence to support his appeal however he is unable to receive the documents before the hearing. In the interest of fairness we respectfully request court for an adjournment."

Attached to that letter was an email from the Appellant referring to his contact in Nepal.

5. The request for an adjournment was placed before Upper Tribunal Judge Smith. Judge Smith responded as follows:

“Your application to adjourn the hearing on 6th November 2018 is refused. It is, and has been, since the challenge to the First-tier Tribunal’s decision your clients’ position that the situation in Nepal following the earthquake in 2015 is a matter relevant to their appeal and that this should have been taken into account. Even if it were reasonable to await the Respondent’s confirmation that he consented to this being dealt with as a new matter, that confirmation was forthcoming as long as 20 August 2018 and at the very latest, when the further directions were promulgated on 25 September 2018. The Appellants have consequently been aware that this is an issue – indeed the issue – on which their appeals turn. In those circumstances and in the absence of any explanation why evidence on that issue was not sought until nearly one month after the directions were issued and two months after the Respondent’s confirmation, I am not prepared to agree to the adjournment of the hearing in order for the Appellants to obtain that further evidence.”

6. I am totally satisfied that that was a perfectly proper order for Judge Smith to make. Confirmation of that order was sent by first class post to the Appellants on 2nd November 2018 and to their solicitors.
7. It is on that basis that the appeal comes back before me for the rehearing today. I am advised that the Appellants do not appear. No explanation is provided. I am satisfied they have been validly served. The Appellants appear by their instructed Counsel Ms Turnbull. I think it is fair to say that Ms Turnbull is extremely embarrassed about the scenario that has developed and the lack of evidence that has been provided along with the failure of her clients to attend or for her instructed solicitors to provide any explanation. I emphasise that no criticism whatsoever can be made of Ms Turnbull. Regrettably this course of events does not preclude such criticism being made firstly against the Appellants’ solicitors and secondly the Appellants themselves. The Secretary of State appears by her Home Office Presenting Officer Ms Brocklesby-Weller.

Documents

8. Ms Turnbull advises me that there is a supplemental bundle which I need to consider alongside that of the original bundle. That bundle was sent on 5th November and I have seen and note its contents. It consists of an email exchange made between the Appellant and family members in Nepal, a photograph of what is purported to be the remains of the Appellants’ residence indicating that the Appellants’ house is derelict and needs rebuilding and a copy of the letter from the Tribunal setting out Judge Smith’s decision. In addition, I am referred by Ms Brocklesby-Weller to the update provided by the Red Cross on the Nepal earthquake. I acknowledge this is an updated document stemming from 24th May 2018.

Submissions/Discussion

9. Ms Turnbull goes through the detailed background of this case including the Appellants' immigration history. I acknowledge that the third Appellant is only age 4. She submits that the Appellants' claim for humanitarian protection stems from the earthquake and that the Appellants rely on documents set out in their previous appeal bundle namely the first Appellant's main witness statement and supportive letters. In addition, I am referred to objective evidence to be found at pages 11 to 27 of the original bundle, most of which she contends is purely factual and not in dispute. In addition, she seeks to rely on the additional documents set out in the second bundle pointing out that the Appellant's case is that his house has been destroyed and that he has nothing to return to and that his own family are unable to accommodate him, his wife and their daughter.
10. Ms Brocklesby-Weller starts by referring me to the updated objective evidence relating to the emergency appeal operation update of the International Federation of the Red Cross dated 24th May 2018 and takes me to the summary therein and the cumulative data of achievements as at 30th April 2018. She submits that the Appellant had not made out a case in order to sustain a claim for humanitarian protection. She notes that there has been provided historic objective evidence but before me today there is a complete lack of evidence regarding the country situation and that many families have had support provided for them in Nepal and that substantial cash grants have been made available. She submits that the Appellants' case effectively stems from the contention that there is not sufficient room for family members to accommodate them if they return to Nepal and she submits that that does not mean that the threshold of humanitarian protection is reached. She reminds me that the first Appellant came here as a student and that he must have had some funds in those days in order to meet the Immigration Rules and she submits that this therefore is indicative that it is highly unlikely that the first Appellant would have no monies available to him on return and that in any event, having been here in this country, and come in as a student he would have skillsets that he would enable him to work. She reminds me that the Article 8 claim based very largely on the claims on behalf of the third Appellant have been dismissed. It is her submission that there is a complete lack of evidence that the Appellant would come to any harm and that there is no evidence produced to me showing that schools would not be available for the third Appellant. She reminds me that both parents are well-educated and further that it is has never been submitted that there any medical conditions that would prevents the Appellants returning to Nepal. It is her strong submission that the threshold necessary to succeed on a claim for humanitarian protection under Article 3 is not reached.

Findings

11. The Appellants have not helped themselves in this matter. I gave very clear directions as to how this appeal would be dealt with, having let in this late appeal to raise a new issue. It is clear from emails that the Appellants' solicitors appear to have left it to the Appellants to obtain

evidence. That evidence has not been forthcoming. All that is produced is a picture of the Appellants' former house showing damage from the earthquake. I have no reason to believe that that is not their house but on the other hand there is no constructive or supportive evidence produced upon which they seek to rely. The Appellants, having failed to produce evidence other than the very small bundle which is handed up by Ms Turnbull then inexplicably failed to attend to give evidence. I would have expected witness statement evidence and a considerable amount of documentary evidence setting out the specific hardship that the Appellants feel that they would suffer on return.

12. I remind myself that the threshold to be reached in a appeal of this nature is a high one and I take into account the submissions that have been made by both legal representatives. It seems to me that there is no possibility whatsoever that the relevant threshold can be met. If it were to be met, it would be necessary for the Appellants to have adduced evidence to show that it has been reached. They have failed to do so. The only evidence that is before me and which I accept is a picture of a damaged house and an email indicating that other family members would find it a case of overcrowding if they went to live with them. Such arguments cannot possibly begin to reach the threshold that would enable a claim of this nature to succeed. From the lack of evidence, and indeed in the lack of preparation of such evidence, backed by the failure of the Appellants to attend to give their own testimony, it is clear that the appeal must fail as the threshold in order to succeed on such a claim cannot possibly be shown to have been reached. The appeal is consequently dismissed. When looked at alongside the previous finding upholding the First-tier Tribunal Judge's decision under Article 8 the end product is that all the Appellants' claims have now been dismissed.

Notice of Decision

13. The Appellants' appeal is dismissed.

14. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

16 November 2018

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

16 November 2018