



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: HU/23595/2016

THE IMMIGRATION ACTS

Heard at: Field House  
On: 11 February 2019

Decision and Reasons Promulgated  
On: 6 March 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

MS SUMITRA GURUNG  
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Jaisri, counsel, instructed by Sam Solicitors

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nepal, born on 5 January 1990. She appeals with permission against the decision of the First-tier Tribunal Judge who, in a decision promulgated on 19 September 2018, dismissed her appeal against the respondent's decision to refuse her application for entry clearance to join her parents in the UK. Her father is an ex-Gurkha soldier.

2. After he retired in 1994 he lived with his family until 2008 when he went to Brunei to work as a security guard until March 2015. The sponsor and his family were granted settlement in the UK on 13 September 2009. The sponsor initially came to the UK on 14 January 2013 to activate his visa. He returned to Brunei for employment and came to the UK on 10 August 2014 to help settle his wife and son who arrived on 11 August 2014. He returned to Brunei on 18 August 2014 and then went to Nepal in March 2015 staying with the appellant until he came to the UK in August 2015.
3. The appellant is the oldest of her parents' three children. She applied for entry clearance to join her parents as their dependant on 8 April 2016.
4. The First-tier Tribunal Judge found the sponsor's oral evidence to be credible. He accepted that there has been financial contribution over the years from the appellant's parents. With regard to the evidence for emotional dependency, the sponsor's oral evidence was general in nature. The sponsor stated that they have taken all major decisions in relation to the appellant's life. Whilst accepting that this may have been the case when she was at school studying, the Judge did not accept that the sponsor showed any real examples of where the appellant had needed her parents' emotional support, such as in making life decisions since she had been living alone [19].
5. Their conversations were more around providing reassurance that they would be reunited in time once the entry clearance application had been concluded. There was no suggestion that the appellant could not live alone, or was finding that aspect difficult. Nor did she have any medical issues. There did not appear to be any need for specific emotional support beyond that shared between close family members [18].
6. He reminded himself that the appellant is in her late 20s and in normal circumstances it would be unusual for grown adults to be so emotionally dependent on their parents, even taking into account cultural differences without some psychological reason which he was not provided with [20].
7. He considered that the appellant has lived alone for the last four years and did not require any further support from her parents beyond the necessary financial support. He had regard to the decision of Sir Stanley Burnton in Singh v SSHD [2015] EWCA Civ 630 that the love and affection between an adult and his parents or siblings will not of itself justify a finding of family life. There has to be something more.
8. He appreciated that this is a case of historic injustice. The sponsor and the appellant would have been settled in the UK long ago but for the historic injustice. However, on current case law, historic injustice can only be remedied in cases such as these where the Court finds that family life ties between an adult child and parent remains.

9. He found that her ties to her parents cannot currently be regarded as amounting to family life. He stated that if he had found that the ties between the appellant and her parents still amounted to family life, despite her age, then the historic injustice would have led to an outcome in the appellant's favour [25].
10. On 31 December 2018, Resident Judge of the First-tier Tribunal Zucker granted the appellant permission to appeal on the basis that it is arguable that the Judge erred in assessing the quality of family life which needs to be established in adult dependent Gurkha case.
11. Mr Jaisri submitted that the Judge did not adopt the correct approach in assessing whether family life existed in this case. He referred to the decision of the Court of Appeal in Rai v Entry Clearance Officer: New Delhi [2017] EWCA Civ 320.
12. At [42], Lord Justice Lindblom stated that:

“Those circumstances of the appellant and his family, all of them uncontentious, and including – perhaps crucially – the fact that he and his parents would have applied at the same time for leave to enter the United Kingdom and would have come to the United Kingdom together as a family unit had they been able to afford to do so, do not appear to have been grappled with by the Upper Tribunal judge under article 8(1). In my view they should have been. They went to the heart of the matter: the question of whether, even though the appellant's parents had chosen to leave Nepal to settle in the United Kingdom when they did, his family life with them subsisted then, and was still subsisting at the time of the Upper Tribunal's decision. This was the critical question under article 8(1). Even on the most benevolent reading of his determination, I do not think one can say that the Upper Tribunal judge properly addressed it.”
13. Mr Jaisri submitted that the approach set out in the case law was not applied to the facts in the appellant's case. The Tribunal did not assess whether family life existed at the time that the sponsor and his wife left Nepal and whether it was still subsisting.
14. Moreover, the Judge erred in stating that they left knowing that the appellant would not automatically qualify for entry, even if this did amount to a compromise that he had no choice but to accept. They had lived apart for four years and he thus questions how relevant the custom is to him, having unmarried children living with their parents. The ongoing financial support given to the appellants by their parents was not enough to lead to a decision that there remains family life [23].
15. Mr Jaisri also relied on ground 3. He contended that the Judge erred in failing to make the assessment of “committed”, “real” and “effective” support, and suggested that there was a need to find a specific emotional support beyond that shared between close family members [19].
16. That, he submitted, departed from the decision in the Court of Appeal with regard to the “committed”, “real” and “effective” test that was correctly identified. He

submitted that the family lived as a family unit before the sponsor and his wife came to the UK. There were subsequently visits which occurred and effective support since then.

17. On behalf of the respondent, Ms Pal submitted that the Judge acknowledged that the appellant's parents played an important part in her life while they were living together. [19] There was at least an implicit finding that they accordingly played an important and significant role in her life.
18. She referred to [18] where the Judge found that there had been financial contribution over the years from the appellant.
19. She referred to the appellant's bundle at 195-199, where her father's bank statements from his Standard Chartered Bank account were produced. The appellant had access to that account, including the period 2016-2017 which post-dated the decision. Her father gave her a card to draw money from his account.
20. Ms Pal referred to the Western Union receipts produced at pages 57-63 showing transfers from the sponsor to the appellant in Nepal. The reason why ATM withdrawals occurred only from 2017 was because there was a cheque book system at the time. The ATM was only later introduced. Prior to 2017 he had signed cheques for her to use according to her requirements.
21. Ms Pal also referred to the sponsor's evidence that he has frequently travelled to Nepal to see her and has left cash for her to use for her expenses. He and his wife had recently travelled to see her. They left the UK on 15 October 2017 and arrived in Nepal the following day, and then returned to the UK on 14 November 2017. His wife stayed there longer, only returning on 28 January 2018. During the stay, they looked after the appellant and spent time as a family.
22. Ms Pal stated that it is 'difficult to submit' adequate findings were made with regard to family life, and particularly those that he made at [24].

### **Assessment**

23. In her witness statement, the appellant stated that her parents did not include her in an application when they made their application, as she was over the age of 18. At that time 'the policy for under 30 dependent policy was not published'. After that policy was issued, it became more broad and flexible.

24. She also stated that she was not working in Nepal and did she lead an independent life. She was dependent on her parents. She has no job and no independent life in Nepal. She tried to look for a job without any success.
25. When her parents went to settle in the UK, family life with them was subsisting. Further, it subsisted at the date of the hearing. On the evidence presented, the appellant did not found an independent family life of her own. Nor had she found employment. She remained part of a family unit even after her parents settled in the UK.
26. Ms Pal properly accepts that the Judge has not made adequate findings with regard to the nature and extent of family life that existed between the appellant and her parents.
27. In the circumstances, I find that the First-tier Tribunal Judge has made errors of law. I accordingly set aside the decision.
28. The parties agreed at the hearing that there would have to be a complete re-hearing. The extent of judicial fact finding necessary in order for the decision to be re-made is extensive.
29. In the circumstances I find that this a proper case to remit to the First-tier Tribunal for a fresh decision to be made.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed

Date 1 March 2019

Deputy Upper Tribunal Judge Mailer