



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

Appeal Number: HU/21510/2018

THE IMMIGRATION ACTS

Heard at Field House

On Friday 24 January 2020

**Decisions &
Promulgated**

On Friday 31 January 2020

Reasons

Before

UPPER TRIBUNAL JUDGE SMITH

Between

BISHWARAJ RAI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jaja, Counsel instructed by Everest Law Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-Tier Tribunal Judge G Mitchell promulgated on 18 July 2019 (“the Decision”) dismissing the Appellant’s appeal against the decision of an entry clearance officer dated 19 September 2018 refusing his human rights claim. That claim was made in the context of an application made by him, his mother and

his two adult sisters to settle in the UK as the widow and adult dependent children of a former Gurkha soldier. The entry clearance officer's decision was confirmed by the entry clearance manager.

2. The Appellant's mother was granted indefinite leave to enter by the Respondent. She has since come to the UK. The appeals of the Appellant's sisters were allowed by Judge Mitchell and they too have been granted settlement and have since arrived here. The Appellant remains in Nepal.
3. Judge Mitchell did not accept that the Appellant's Article 8 rights were engaged. He concluded that the Appellant no longer enjoyed a family life with his mother and siblings. He was born on 6 June 1991 and is now aged twenty-eight years. As is pointed out on his behalf, one of his sisters whose appeal was allowed was born in 1988 and is therefore older than him. The other is younger. The crucial difference as far as Judge Mitchell was concerned, as I come to below, is that the Appellant had left the family home in Nepal between 2012 and 2016 to work in Saudi Arabia.
4. I emphasise that it is of course not disputed that the Appellant enjoys a family relationship with his mother and sisters. The crucial issue here though is whether that is sufficient to constitute a continuing family life as a matter of law in order to engage Article 8 ECHR where that relationship is one between adult family members.
5. I also note that Ms Jaja made clear that the Appellant does not and did not before Judge Mitchell rely on the Appellant meeting the Gurkha policy for settlement. It would not be necessary for the Appellant to do so in any event. As Mr Jarvis fairly conceded, if the Judge was wrong to find that Article 8 was not engaged and that it therefore was, there could be no argument based on proportionality for refusing the Appellant entry and therefore the appeal would have to be allowed.
6. I will come to the substance of the Decision below. The Appellant has raised two grounds of challenge to the Decision. The first is that the Judge failed to consider material evidence namely the Appellant's witness statement which was not part of the Appellant's bundle but was filed separately and is dated 26 June 2019 (the day before the hearing before Judge Mitchell). The second ground is that the Judge materially misdirected himself as to the law.
7. Permission to appeal was granted by First-tier Tribunal Judge JM Holmes on 5 November 2019 in the following terms so far as relevant:

“... 3. It is arguable that the Judge's approach to whether 'family life' for the purposes of Article 8(1) had been recreated between the Appellant, his mother and his two adult siblings upon his return to Nepal from Saudi Arabia in 2016 was flawed, because it is arguable the Judge introduced a test of financial necessity [34] when he should have been focused

entirely upon the nature of the relationships between these adult family members, reminding himself that there is no high threshold of engagement.

4. All the grounds may be argued.”

Although the reasons given by Judge Holmes relate to the second ground of appeal, he has not limited the grounds which may be argued, and I therefore need to consider both grounds.

8. The matter comes before me to decide whether the Decision does contain any error of law and, if I so conclude, either to re-make the decision or remit the appeal to the First-tier Tribunal for re-making. As I have already noted, if the Judge has erred in his conclusion that Article 8 is not engaged, the Respondent accepts that the Appellant is entitled to succeed.
9. The Appellant submitted an “Addendum Bundle” on 15 January 2020. No application was made to adduce additional evidence (under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008). Insofar as that bundle contains additional evidence, I therefore disregard it. It could not in any event be relevant as to whether the Decision contains an error of law as the additional evidence was not before the First-tier Tribunal Judge.

DISCUSSION AND CONCLUSION

GROUND ONE

10. The Judge dealt with the Appellant’s witness statement at [8] of the Decision as follows:

“The evidence within the witness statements of the Appellants has also not been challenged by the Respondent. However, Mrs Rai said in her oral evidence the Appellants speak only a little English and the Appellants all indicated in their application forms that if they needed to be interviewed in connection with their applications they wanted to be interviewed in Nepalese. In light of this, it is of concern that the Appellants’ witness statements do not contain a declaration confirming that the statements were translated to them before they signed them. In light of this, and in light of the failure to make arrangements for the Appellants to give oral evidence, I have attached little weight to the evidence within these witness statements.”

11. I begin by observing that the Judge did not disregard the Appellant’s evidence altogether. He said that he attached little weight to it for the reasons he gave. He also took into account the oral evidence of the Appellant’s mother which dealt with much of what was said in the statements and therefore any error could not be material. As I come to below, there are however two areas in particular with which the Appellant deals in his statement which the Appellant says the

Judge has disregarded because he has not given weight to the statement.

12. I start with the reasons identified in the grounds for the Judge's refusal to give weight to the statement. It is said that there are three reasons given: first, the Appellant asked to be interviewed in Nepalese if needs be and his mother said he spoke only some English; second, it is said that the document was not in Nepalese and therefore did not require a translation; third, it is submitted that the failure to make arrangements for witnesses to give oral evidence is not usual in entry clearance cases.
13. I deal with each of those reasons in turn. The Appellant is resident in Nepal. There is no evidence that he has ever lived in the UK. There is no evidence that he has ties to the UK (at least not before his mother came here). He has worked in Saudi Arabia but there is limited evidence about that period as I will come to. It is not said that he has any grasp of English from his time spent there. The evidence which the Judge did have was from the Appellant's mother that the Appellants "speak only a little English". The grounds say that further enquiry should have been made because that he speaks only a little English does not mean that the Appellant could not read and understand English. However, there was no reason that he would. The Appellant's mother does not speak much if any English herself. She gave evidence through an interpreter.
14. As the Judge notes and the Appellant does not dispute, he asked to be interviewed in Nepalese if needs be. Of course, a person facing an interview or court hearing may well ask to give evidence in his or her mother tongue due to the stress of the situation and greater familiarity with that language. However, I am here concerned with whether there was an error of law in the Judge's reliance on the evidence he was given about the Appellant's language ability. There is nothing in the evidence which undermines his reasoning. He was entitled to rely on that reason.
15. The Appellant misunderstands the second reason. The point is not that the document was in Nepalese and needed to be translated but whether the Appellant had read and understood a document written in English when signing it. It is not uncommon for a statement to be signed on the basis that it has been read back to an appellant by an interpreter where that person is not conversant with the English language whether the appellant is in the UK or not. In circumstances where the Appellant was living in Nepal and on the evidence spoke only some English, the Judge was entitled to give less weight to the written evidence where he could not be satisfied that the Appellant understood the written evidence he was giving.

16. In relation to the Appellant's attendance, I accept that it is not unusual for entry clearance appeals to proceed without oral evidence from an appellant who is living abroad. As the Appellant submits and I accept, the Respondent would be unlikely to grant entry clearance for a visit to give evidence. The Appellant recognises that video-link evidence is now a greater possibility than it was in the past. It does however remain expensive. However, the Judge was not holding against the Appellant any non-attendance. The Judge had concerns about the Appellant's understanding of his written witness statement and for that reason could give it less weight. The fact that the Appellant was not present was relevant to weight given to written evidence when combined with the other evidence about his understanding of English but not otherwise.
17. The Judge was entitled to give less weight to the statement for the reasons given. The weight to be given to evidence is a matter for the Judge dealing with that evidence absent a misdirection, failure to give reasons or misunderstanding of the evidence on which the attribution of weight depends. None of those factors applies here.
18. In any event, there is an issue as to the materiality of the evidence in the Appellant's written statement and therefore the weight attributed to it. The Judge sets out at [21(d)] of the Decision, the Appellant's mother's evidence about the Appellant's circumstances as follows:
- "As for Bishwaraj, who as 27 years old at the date of the applications, Mrs Rai says his circumstances were the same as Anjana and Sabita save in the following respects. He had tried, unsuccessfully, to enrol in the British Army. Then he secured a job in a bakery in Saudi Arabia from 2012 to 2016. Mrs Rai helped to finance his travel to Saudi Arabia by borrowing money, which Bishwaraj repaid out of his wages. While he was in Saudi Arabia, Bishwaraj spoke to Mrs Rai most weeks. He also returned to visit his mother in Nepal on several occasions. In 2016, Bishwaraj returned to Nepal because he did not like the working and living conditions in Saudi Arabia. Since returning to Nepal, Bishwaraj had moved back in with Mrs Rai and her daughters. Mrs Rai says he has been unable to find further employment and she provides him with financial support. I have set out my findings in relation to this part of Mrs Rai's account in section D, below."
19. The recitation of Mrs Rai's evidence is consistent with what Bishwaraj himself says about his circumstances. I will come to the Judge's findings about that evidence when dealing with ground two below. For present purposes, I note that there are two aspects of the Appellant's evidence which Ms Jaja said were ignored in the Judge's finding or undermined by the Appellant's statement: his earning capability in Saudi Arabia and his employment prospects in Nepal. She did not accept on the evidence that the Appellant's family life with his mother and siblings had come to an end when he went to work in Saudi Arabia and, even if it had, it had, she said, been resumed when he returned to Nepal because of his dependency on his mother thereafter.

It is relevant to consider the evidence and the Judge's reasoning and findings in the context of ground two to which I now turn.

GROUND TWO

20. The relevant paragraphs of the Appellant's statement which relate to the Judge's findings under challenge read as follows:

"3. I have had no development in my life. I tried to enrol into the British Army but was not selected. I did travel to Saudi Arabia for work from 2012 until 2016. During this time, I was working in a bakery as a food packager. I returned to Nepal as the living condition was very harsh and the working hours were dire. I was in regular contact with my mother while I was in Saudi Arabia. I was earning money, but it was barely enough for my living expenses. I also had to send back money as I had borrowed money from other people when I went to Saudi Arabia.

4. Since I returned to Nepal in 2016, I have been relying on my mother and will continue to do so.

5. Since migrating to the UK, I have been in regular contact with my mother at least 2-3 times a week. I speak to her about our wellbeings. I miss her during holidays and festivals.

6. As for financial support, my mother sends my sister Sabita money as per our need. Sabita then distribute this money amongst the appellants. We also have access to my mother pension account in Nepal. I can use that money for our living expenses.

...

8. I am in a miserable position without my mother. I speak to my mother in order to get the emotional support I need. I spend my time in Nepal preparing for the time when I will be reunited with my mother in the UK. We are communicating over the phone, but it is not working out for us. My mother is not educated. She needs assistance in day to day affairs in the UK. She found it difficult to make a simple call to me from the UK at the beginning.

9. I am single and I have never been in employment in Nepal. There is no employment for me in Nepal. I will remain dependent on my mother."

21. Ms Jaja made no submissions about the evidence concerning the Appellant's mother's dependency on him (rather than vice versa). She of course now has the benefit of her daughters to look after her in the UK. It is though relevant to record what the Judge says about the family circumstances since the separation caused by the Appellant's mother coming to the UK:

"23. Since her arrival in the UK, Mrs Rai says she has left Sabita in control of the account into which her widow's pension is paid and she allows Sabita and the other Appellants to use this income to support themselves. Mrs Rai says she relies upon Jobseeker's Allowance and Housing Benefit to fund her accommodation and subsistence needs in the UK. She says she has also sent a small amount of money to the Appellants since arriving in the UK. Mrs Rai's evidence about this is to an extent corroborated by the bank statements and money transfer receipts

she produced. Mrs Rai's evidence about this has not been challenged by the Respondent and I accept it.

24. Since arriving in the UK, Mrs Rai says she speaks to the Appellants several times each week. The documentary evidence adduced by Mrs Rai in an attempt to corroborate this is in the form of chat records from a smartphone app, but these are of little assistance as they do not identify the other caller. Nonetheless, I accept Mrs Rai's evidence about this. I do so because it is consistent with the rest of her evidence about the strength of her ties with Sabita and Anjana in particular. In addition, it has not been challenged by the Respondent.

25. While Mrs Rai is described in the evidence as '*old and frail*', no evidence has been adduced to indicate Mrs Rai suffers from any significant physical or mental impairment. Her receipt of Jobseekers' Allowance indicates she is well enough to work."

22. Having directed himself in accordance with the Court of Appeal's judgment in Rai v Entry Clearance Officer [2017] EWCA Civ 320 ("Rai"), and determined that the Appellant's siblings met the necessary conditions to engage the test, the Judge turned to the Appellant's case and made the following findings:

"30. The position in relation to Bishwaraj is different. This is because he lived an independent life in Saudi Arabia between 2012 and 2016.

31. Ms Jaja submitted the Respondent's decision letter did not refer to this period. However, the decision letter made clear the Respondent was not satisfied that article 8 was engaged. The Entry Clearance Manager's Review then expressly referred to this period as one of the reasons for the Respondent's position.

32. I acknowledge Mrs Rai assisted in enabling Bishwaraj to take up the job offer in Saudi Arabia. However, once he established himself in Saudi Arabia, he became financially independent. I also acknowledge he stayed in contact with Mrs Rai while he was in Saudi Arabia. However, this was no more than a manifestation of the normal, emotional ties between an adult child and their parent. Consequently, I am satisfied there was no article 8 family life between Bishwaraj and Mrs Rai during this 4 year period.

33. Where article 8 family life between an adult child and a parent has ended, it is not impossible for there to be article 8 family life between them subsequently. However, it is significantly harder to establish there is article 8 family life in that situation as compared with the situation as compared with the situation where there has been no interruption. If a resumption of article 8 family life is asserted on the basis cohabitation and family support has resumed, it is relevant to ask why has it resumed?

34. Bishwaraj did not return to live with Mrs Rai because she needed his support. He returned because she would provide him with a roof over his head and subsidise his living needs. However, I am not satisfied this was necessary. There is no evidence before me about whether he was

able to save while working in Saudi Arabia and could have used those savings upon his return. I am also not satisfied he was unable to secure further employment, whether in Nepal or further afield. Given Bishwaraj resumed living with Mrs Rai after the 2015 policy change, I infer his return to living with Mrs Rai was at least in part in order to try to keep alive the possibility of resettling with her in the UK. I am also satisfied that it was only ever likely to be a temporary arrangement.

35. As a result, when Bishwaraj's application was determined, I am not satisfied there was a level of committed and effective support between Bishwaraj and his mother necessary to engage article 8. This is also my conclusion in relation to the relationship between Bishwaraj and his sisters, Sabita and Anjana. There have been no changes, material to this issue since Bishwaraj's application was rejected. As a result, Bishwaraj's appeal fails."

23. Before I turn to examine the Judge's reasoning, it is necessary to look at the case-law relating to the issue of engagement of Article 8 as the Appellant's ground two is premised on the Judge having materially misdirected himself as to the law. The Appellant relies on the cases of Rai, Ghising and others (Ghurkhas.BOCs: historic wrong: weight) [2013] UKUT 567 (IAC) and Gurung and others v Secretary of State for the Home Department [2013] EWCA Civ 18. The Judge directed himself on the case of Rai and Ms Jaja's submissions focussed on what is said in that case. That case refers to other relevant case-law. It is therefore only necessary to set out what is said in that case about Article 8 engagement as follows:

"16. The legal principles relevant to this issue are not controversial.

17. In *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31, Sedley L.J. said (in paragraph 17 of his judgment) that 'if dependency is read down as meaning 'support', in the personal sense, and if one adds, echoing the Strasbourg jurisprudence, 'real' or 'committed' or 'effective' to the word 'support', then it represents ... the irreducible minimum of what family life implies'. Arden L.J. said (in paragraph 24 of her judgment) that the 'relevant factors ... include identifying who are the near relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom he has resided in the past, and the forms of contact he has maintained with the other members of the family with whom he claims to have a family life'. She acknowledged (at paragraph 25) that 'there is no presumption of family life'. Thus 'a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties'. She added that '[such] ties might exist if the appellant were dependent on his family or vice versa', but it was 'not ... essential that the members of the family should be in the same country'. In *Patel and others v Entry Clearance Officer, Mumbai* [2010] EWCA Civ 17, Sedley L.J. said (in paragraph 14 of his judgment, with which Longmore and Aikens L.JJ. agreed) that 'what may constitute an extant family life falls well short of what constitutes dependency, and a good many adult children ... may

still have a family life with parents who are now settled here not by leave or by force of circumstance but by long-delayed right’.

18. In *Ghising (family life – adults – Gurkha policy)* the Upper Tribunal accepted (in paragraph 56 of its determination) that the judgments in *Kugathas* had been ‘interpreted too restrictively in the past and ought to be read in the light of subsequent decisions of the domestic and Strasbourg courts’, and (in paragraph 60) that ‘some of the [Strasbourg] Court’s decisions indicate that family life between adult children and parents will readily be found, without evidence of exceptional dependence’. It went on to say (in paragraph 61):

‘61. Recently, the [European Court of Human Rights] has reviewed the case law, in [*AA v United Kingdom* [2012] Imm. A.R.1], finding that a significant factor will be whether or not the adult child has founded a family of his own. If he is still single and living with his parents, he is likely to enjoy family life with them. ...’.

The Upper Tribunal set out the relevant passage in the court’s judgment in *AA v United Kingdom* (in paragraphs 46 to 49), which ended with this (in paragraph 49):

‘49. An examination of the Court’s case-law would tend to suggest that the applicant, a young adult of 24 years old, who resides with his mother and has not yet founded a family of his own, can be regarded as having ‘family life’.’

19. Ultimately, as Lord Dyson M.R. emphasized when giving the judgment of the court in *Gurung* (at paragraph 45), ‘the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case’. In some instances ‘an adult child (particularly if he does not have a partner or children of his own) may establish that he has a family life with his parents’. As Lord Dyson M.R. said, ‘[it] all depends on the facts’. The court expressly endorsed (at paragraph 46), as ‘useful’ and as indicating ‘the correct approach to be adopted’, the Upper Tribunal’s review of the relevant jurisprudence in paragraphs 50 to 62 of its determination in *Ghising (family life – adults – Gurkha policy)*, including its observation (at paragraph 62) that ‘[the] different outcomes in cases with superficially similar features emphasises to us that the issue under Article 8(1) is highly fact-sensitive’.

20. To similar effect were these observations of Sir Stanley Burnton in *Singh v Secretary of State for the Home Department* [2015] EWCA Civ 630 (in paragraph 24 of his judgment):

‘24. I do not think that the judgments to which I have referred lead to any difficulty in determining the correct approach to Article 8 in cases involving adult children. In the case of adults, in the context of immigration control, there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in *Kugathas* did not include any requirement of exceptionality. It all depends on the facts. The love

and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8.”

24. What is there said is consistent with what is said by the Judge at [26] of the Decision. Where one is considering whether family life exists between adult family members more is required than normal emotional ties. Family life depends on “committed and effective support”. The fact that an adult child has formed an independent life will tend to suggest that family life has come to an end. The fact that the parent and child are living apart is relevant but not determinative; whether family life exists depends on the reasons for separation. Finally, whether family life exists for Article 8 purposes is fact sensitive requiring “careful consideration”. It is, as Mr Jarvis submitted, a “nuanced assessment”.
25. In fact, when one reads the grounds of appeal and considers Ms Jaja’s submissions, the Appellant’s challenge is not that the Judge misdirected himself as to the law but that he misapplied the law to the facts of this case.
26. Ms Jaja relied on certain factors as pointing in the direction of family life being or remaining in existence. The Appellant has not formed his own family; he is single. He lived in Saudi Arabia whilst his family remained in Nepal. However, Ms Jaja said that, by reference to what is said in Rai, family members did not have to be in the same country for family life to continue to be enjoyed. That comment needs to be looked at in context. It is common in Gurkha cases, as the Court of Appeal noted at [42] of its judgment, for families to be split between Nepal and the UK because, for example, parents arrive to settle before children either because of the cost of applications for entry clearance or because of policy changes. That does not mean however that it will routinely be the case that family life continues to exist where families are split. As the Judge put it, it depends on the reasons for the separation. In the case of the Appellant’s move to Saudi Arabia, that was with a view to securing his own employment as the Judge noted.
27. Furthermore, Ms Jaja said that, whatever the position between 2012 and 2016, the Appellant was living with and on the evidence dependent on his mother thereafter, both at the time the application was made and at the time of the appeal. She said that the Judge had dwelt unduly on the 2012 to 2016 period without recognising that circumstances had changed. However, as the Court of Appeal also noted in Rai, the issue of where and with whom he has resided in the past is a relevant consideration.

28. Ms Jaja submitted several times that the Appellant's mother considered the family to be one unit and intended the family to move as one unit. That is as may be. However, the issue is whether the Appellant, as a matter of law, has evidenced the necessary commitment and support to show that family life exists between him on the one hand and his mother and sisters on the other. Furthermore, as Mr Jarvis pointed out the issue for me is whether the Judge made any material error of law when determining this issue.
29. I begin by looking what is said about the period between 2012 and 2016. It is relevant that the Appellant moved out of the family home when he was aged twenty-one years. That he went looking for work suggests that he was looking to gain his independence. He first tried to join the British Army and when he was rejected, moved abroad to work.
30. The Judge's consideration of that period is criticised on the basis, first that his mother funded his move by borrowing money and second that he retained contact with his family. As to the first, the Appellant's evidence is that he was repaying the loan himself from his earnings in Saudi Arabia. Whilst he may have depended on his mother to fund his move initially, that is beside the point. The fact that he had taken on the responsibility for repaying the loan is if anything more consistent with him relinquishing support than continuing to rely upon it.
31. As to the second, the Judge accepted that he visited his mother and phoned her. In fact, the evidence suggests that he phoned her once per week and that he visited three times in five years. However, that is nothing more than a continuation of the relationship of parent and child. It does not evidence "committed and effective support". There is no suggestion that his mother was dependent on him or that he was dependent on her on the evidence. There is no error in the Judge's reasoning as appears at [32] of the Decision or his conclusion that there was no family life at that time.
32. The position thereafter is perhaps more nuanced. As Ms Jaja pointed out, the Judge considered the period after the Appellant's return to Nepal only at [34] of the Decision. The Judge there indicated that there was no evidence about whether the Appellant was able to save whilst working in Saudi Arabia which I accept is inconsistent with what is said at [3] of the Appellant's statement, as set out at [20] above. That is indeed one of the errors asserted in ground one as disclosing materiality of that evidence. As Mr Jarvis pointed out, though, it is mere assertion that the Appellant did not earn enough to save anything. There are no particulars or corroboratory evidence provided.
33. In any case, says Mr Jarvis, it is not the only reason why dependency is not accepted. The other reason that the Judge found

that the Appellant had not established the necessary support relationship was because he was not satisfied on the evidence that he was not able to secure his own employment on return. Whilst the Appellant asserts that this is the position and the Appellant's mother says the same, the evidence is premised on mere assertion. The way it is expressed in the Appellant's statement is also unclear. He says that he has never worked in Nepal. That may well be so but does not explain why not. He says "[t]here is no employment for me in Nepal" and that he intends to remain dependent on his mother. But he gives no details of why he cannot work there nor what efforts he has made to find work. Particularly in circumstances where he has some past employment history, more was needed. The Judge was entitled not to be satisfied that the evidence showed that the Appellant was unable to find work in Nepal. This is the second aspect of the evidence relied upon in ground one. I do not consider that the Judge fell into error in making the finding he did on this aspect on the evidence.

34. That brings me to the other point made by Ms Jaja about the reasoning of the Judge at [34] of the Decision which reflects the basis on which permission was granted, namely that the Judge has wrongly focussed on a test of financial necessity.
35. In this regard, what the Judge says has to be considered in the context of the evidence. The evidence of support between the Appellant was based on three factors. First, the financial dependency based on his lack of employment. Second, the contact maintained between him and his mother. Third, the "emotional support" which the Appellant needed from his mother and she from him. I have already dealt with what the Judge said about the Appellant's mother's reliance on him. There was no evidential basis for suggesting that she was reliant on him for "day to day affairs" in the UK as he asserted. He says that she found it difficult to call him when she first came to the UK but that is undermined by the evidence which shows that she has been regularly communicating via a smartphone. Again, there is a bare assertion of the need for emotional support with no particulars.
36. In light of the evidence, it is unsurprising that much of what the Judge says is directed to the financial aspect of the support. That was the main substance of the evidence. There is no error of law on the basis identified in the permission grant.
37. What is said at [34] of the Decision also has to be read in the context of [33] of the Decision. As I have already noted, the Judge was entitled on the evidence to find that the relationship of family life came to an end when the Appellant moved to Saudi Arabia to work. At [33] of the Decision, the Judge observes that, while it is possible to find that family life has been recreated and Article 8 re-engaged by subsequent circumstances, "it is significantly harder to establish" in such cases. There is a presumption of family life between parent and minor child

but the same is not the case where a child becomes an adult. Ms Jaja's submissions appeared to assume that, unless there was sufficient evidence pointing in favour of the Article 8 family life having come to an end, it continues. That is not the law. It is in relation to a parent and minor child but not in relation to a parent and adult child.

38. Whilst I accept that there is no presumption the other way as the case-law makes clear, in circumstances where an adult child has left home to start his or her own independent life, it stands to reason that it will be more difficult to establish on the evidence that the necessary dependency has resumed. It is not impossible. One can envisage a situation where a child leaves home to start his own life, but an accident then befalls him, which renders the child unable to continue to live alone. Similarly, where an elderly parent moves to live with an adult child because he is unable to live alone, I can readily accept that family life begins again. Article 8 would then be engaged once again.
39. However, on the evidence in this case, the Judge was entitled to question whether a dependency/ support relationship had been re-established which included the question why the Appellant had gone back to live at home. There is no error in the approach taken by the Judge at [33] of the Decision and, even if the point about savings is speculative and unsupported by the evidence, the Judge was entitled to conclude that the evidence did not show that the necessary support relationship, emotional or otherwise, had been re-established.
40. For those reasons, I am satisfied that the Judge did not err in his self-direction as to the law nor as to his application of the law to the facts. For that reason, ground two fails.
41. As to ground one, as set out above, my primary conclusion is that there is no error. In any event, I accept that any error is not material. The only matters raised in the Appellant's statement not covered by the mother's evidence would not materially affect the reasoning. Even if the Judge was wrong to take into account that the Appellant might have saved money from his job in Saudi Arabia, his conclusion would remain the same without that finding. In any event, the question is not (or not only) one of financial dependency (as is observed in the permission grant). The ultimate question is whether there is a relationship of "committed and effective support" between parent and adult child. It depends on all the evidence. The Judge was entitled to conclude that such relationship was not established on the evidence.

CONCLUSION

42. For the above reasons, I am satisfied that there is no material error of law disclosed by the grounds of appeal. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge G Mitchell promulgated on 18 July 2019 with the consequence that the Appellant's appeal stands dismissed



Signed
Upper Tribunal Judge Smith

Dated: 28 January 2020