



Upper Tribunal

**(Immigration and Asylum Chamber)
HU/24230/2018 (P)**

Appeal Number:

THE IMMIGRATION ACTS

Decided under rule 34 (P)

**Decision & Reasons
Promulgated**

On 29 July 2020

On 6 August 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MADINA LIMBU

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

For the ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

**Representation (by way of written submissions)
For the appellant: Everest Law Solicitors**

**For the respondent: Mr A McVeety, Senior Home Office
Presenting Officer**

Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Saffer on 4 February 2020 against the determination of First-tier Tribunal Judge P J White, promulgated on 1 October 2019 following a hearing at Taylor House on 19 August 2019.
2. The appellant is a Nepalese national born on 22 July 1981. She sought entry clearance as an adult dependent child to join her father, a former Gurkha, present and settled in the UK. Her application was refused by the ECO on 28 October 2018 under the Home Office policy on adult children of former Gurkhas, under the Immigration Rules and article 8.
3. It was conceded at the hearing that the appellant could not come within the policy as she was over 30 when the application was made (at 19). The judge found that she did not qualify under Appendix FM and that there was no family life such as to engage article 8. Accordingly, he dismissed the appeal.
4. Two grounds of appeal were put forward by the appellant. The first was that the judge failed correctly record the evidence and secondly that he failed to give adequate reasons or accord sufficient weight to the evidence. Permission was granted on the basis that the judge arguably misunderstood the factual matrix of the appeal.

Covid-19 crisis: preliminary matters

5. The matter was listed for a hearing at Field House on 25 March 2020 but due to the Covid-19 pandemic and need to take precautions against its spread, the hearing was adjourned and directions were sent to the parties on 5 May 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
6. The Tribunal has received written submissions from both parties. I now consider the matter.
7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance

Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

8. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. Neither party has raised any objection to the matter being considered on the papers. A full account of the facts are set out in those papers and that the issue to be decided is a narrow one. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellant and consider that a speedy determination of this matter is in her best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

9. The respondent's submissions were received first by the Tribunal. They are dated 27 May 2020. The appellant replied on 29 May 2020 agreeing with the those submissions. I have not seen any earlier correspondence from the appellant.

Discussion and conclusions

10. I have considered all the evidence, the grounds for permission and the submissions made by both parties. I am satisfied that for the following reasons the judge's determination contains errors of law and that his decision is unsustainable.
11. The appellant argues in her grounds that the judge was wrong to find discrepancies within the evidence as to the financial support the appellant received from her father. The evidence shows that she is right to complain. Contrary to what the judge recorded at paragraph 15, the sponsor has visited the appellant every year since arriving in the UK and his last visit was not five/six years ago. His annual visits are accepted by

the respondent in the decision letter and indeed confirmed by the endorsements in his passports, all of which was evidence before the judge. Plainly he did not consider it carefully enough.

12. It would appear that the judge conflated the mother's visits with those made by the sponsor. The evidence before him was that the appellant's mother had last visited in 2014 and that she had been unable to return since due to ill health. The sponsor continued to visit his daughter without her. I accept that this is an important point because the appellant's evidence was that her father brought her money on his visits. Clearly the misunderstanding of this evidence impacts upon the judge's findings of financial dependency. Equally, his finding on emotional dependency is flawed as it was also based on the misunderstanding that the sponsor had not visited for several years.
13. With respect to the second ground, the appellant argues that the judge was wrong to find that she had offered no explanation for remaining unemployed when in fact she had addressed this in her witness statement. That again is correct. The judge does not appear to have considered that evidence. The appellant explained that she was poorly educated and that this hindered her prospects of employment so she remained in the family home and continued to be reliant upon her father for support.
14. It is pointed out by the appellant's representatives that the sponsor has only sought to bring one of his four children to the UK and that the appellant continued to live in the family home since the sponsor's departure. She is single, unemployed and reliant upon the sponsor for support. These are matters which show ties, dependency and family life but they were not considered by the judge.
15. Mr McVeety in his submissions properly and fairly accepts that the judge erred in his assessment of the evidence on financial dependency and the sponsor's visits. Whilst it is not accepted that the findings on family life are flawed, he concedes that given his concession, the appropriate course of action would be for a remittal to the First-tier Tribunal. The appellant agrees with the proposed solution.
16. This is an appeal where the appellant has not had a fair hearing. Despite the respondent's submissions on family life, I am reluctant to preserve that finding as the judge's misunderstanding of the evidence may well have impacted on and influenced his conclusions on the issue of whether family life continued between the appellant and her parents. The

determination is therefore set aside in its entirety and a fresh decision shall be re-made by another judge of the First-tier Tribunal on all issues.

Decision

17. The decision of the First-tier Tribunal is set aside and shall be re-made on all issues by another judge of the First-tier Tribunal.

Anonymity

18. There has been no request for an anonymity order at any stage and I see no reason to make one.

Directions

19. Directions for the hearing shall be issued in due course by the First-tier Tribunal.

Signed

R. Kekić

Upper Tribunal Judge

Date: 29 July 2020