



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003156
First-tier Tribunal No:
HU/00571/2022
HU/54254/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

Ms Belmati Rajali
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr I Samson (Solicitor at Goulds Green Chambers)
For the Respondent: Ms S Mckenzie (Senior Home Office Presenting Officer)

Heard at Field House on 3 November 2023

DECISION AND REASONS - RE MAKING

1. This is a decision following a hearing on 29 August 2023 at which the Upper Tribunal (UT) found that there was a material error of law by the First-tier Tribunal which dismissed the appeal on 17 May 2022. The UT issued a decision and reasons on 1 September 2023 finding an error of law and making directions that there be a further hearing for remaking based on submissions on the issue of dependency; whether it was real committed and effective support. The UT was content to rely on the core findings made by the FTT as to financial and emotional support and it was not necessary to revisit the findings in respect of the issues delayed divorce and contact /location of siblings. Although the UT decision at [14]

(wrongly) suggested to the contrary, there was no intention on the part of the UT for new findings to be made.

2. The hearing before me was a re making. Both representatives made submissions. There had been no Rule 24 response from the respondent and the appellant filed an ASA dated 29 October 2023 putting forward arguments in relation to an error of law hearing, but Mr Samson properly addressed the UT with submissions as to the pertinent issues of family life.
3. The appellant, aged 31 years, applied for leave to enter as a dependent relative of her father who was a former Gurkha soldier granted settlement in October 2018. It was accepted by the FTT that the appellant received financial support from her father. The issues was whether or not there was family life over and above the normal ties. I am satisfied that the findings made by the First-tier Tribunal were capable of supporting a conclusion that there was real, effective and committed family life, having regard to the evidence adduced. The FTT found that there was financial dependence and emotional dependence [22]. *“As to the issue of financial dependency I am quite satisfied that the appellant remains reliant upon her father for funds for her day to day existence. There is an abundance of evidence of money being sent to the appellant in Nepal by her father. That situation, on the evidence, has subsisted for seven years now.”*[26]
4. I am satisfied that the matters considered by the FTT as reasons for dismissing the appeal ought not to be given much weight in the absence of evidence given the core findings made by the FTT which were not challenged. Even if the appellant were to have been divorced many years after the separation and had some contact with her siblings, there was no evidence to show that this diminished the family life as between the appellant and her parents. The essential findings made by the FTT of emotional and financial dependency establishes that there is dependency and that this amounts to over and above the normal family ties.
5. Having regard to the evidence and the submissions made I find that there was real, effective and committed family life which engages Article 8. The sponsor is employed and can continue to provide financial support and accommodation for the appellant- no public interest issues were raised by the respondent save for immigration control. In terms of proportionality I accept the arguments as to historic injustice which tip the balance in favour of the appellant, as per Ghising & ors [2013] UKUT 00567 (IAC) and Gurung & ors, R(on the application of) v SSHD [2013] ECWA Civ 8. The appellant would have been 4 years old at the relevant time when the sponsor left the army and would have settled in the UK.

Notice of Decision
The appeal is allowed

G.A. Black
Deputy Judge of the Upper Tribunal

9.11.2023