



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2022-  
004393  
UI-2022-  
004394  
First-tier Tribunal:  
HU/20385/2019  
HU/01169  
/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 5 September 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**ANISHA THAMSUHANG  
ALISHA THAMSUHANG  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Wilford, Counsel, instructed by Everest Law  
For the Respondents: Mr Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 4 August 2023**

**DECISION AND REASONS**

**Background**

1. The appellants are siblings and citizens of Nepal born on 8 January 1989 and 21 November 1991 who appeal against the decision of First-tier Tribunal Judge Manuell (“the judge”) promulgated on 3 May 2022 dismissing their appeals

against the respondent's refusals, on 15 October and 11 October 2019, of entry clearance on human rights grounds.

2. The appellants had applied for leave to enter the UK as the adult dependants of their mother, ('the sponsor') the widow of their late father, a former Gurkha soldier. Their appeals against the respondent's refusals were initially dismissed by the First-tier Tribunal in March 2021. The Upper Tribunal set aside those decisions on 23 August 2021 and the remitted appeals came before Judge Manuell.
4. Permission to appeal was granted by the Upper Tribunal with all grounds arguable. The appellant applied for permission to appeal on the grounds that (in summary, and I have considered both the grounds to the First-tier Tribunal and the Upper Tribunal) the judge failed to put matters of concern to the sponsor; secondly that the judge took immaterial matters into consideration and irrationally found that the modest threshold for family life under Article 8(1) had not been met; and applied the wrong test for family life in looking for real effective and committed dependency which was not the test in Rai [2017] EWCA Civ 320.
5. The matter came before me. I heard submissions from both parties and at the end of the hearing I reserved my decision.
6. I have had regard to the authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. This was summarised by Lewison LJ in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] as follows:

"i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

## **Discussion**

7. Ground 1 argued that the judge made erroneous findings on the available evidence, in particular that the judge made findings on evidence that was never put to the sponsor, including in relation to the evidence of the family farm, the photographs provided, improved lavatories and solar panels, as well as making findings about the lack of evidence of the sponsor's benefits, despite this evidence being in the provided bank statements.
8. Mr Wilford submitted that the judge's approach offended against the principles in Browne v Dunn (1893) 6 R. 67 (HL); essentially if the evidence of a witness is rejected then fairness requires that the witness be made aware of the implication that their evidence was untrue.
9. However, the appellants and the sponsor were on notice that the respondent (in the refusals of entry clearance) was not satisfied that the appellants had demonstrated real or committed or effective support from their mother and the respondent specifically pointed out that the appellants had 'provided limited details as to your financial commitments in Nepal' and that the appellant had 'submitted limited documentation' and had not 'demonstrated that [they were] financially and emotionally dependent' on the sponsor 'beyond that normally expected between a parent and adult child'.
10. Whilst Counsel sought to dissect the judge's approach and reasoning, in those circumstances, where the adequacy of the evidence provided by the appellants/sponsor was at issue, it was open to the judge to make findings on the available evidence, including where he found that evidence to be still lacking, as the respondent had in the refusal letters. The judge was not required to accept all the evidence before him at face value. The judge considered all that evidence in the round and reached conclusions that were open to him, in effect that he was not satisfied that the appellants had demonstrated that they were (in the words of the respondent) financially and emotionally dependent on the sponsor beyond that normally expected between parents and adult children.
11. The judge, at [14] noted that the evidence provided was 'thin, uninformative, and lacking in focus' with 'little insight into either the emotional dependency or financial dependency claimed' noting that there was no evidence from any other family members or anyone else who knew the family. It was open to the judge to make those findings on the evidence before him, including following his careful consideration of the evidence, reaching conclusions that there was limited information about the family farm and its produce, with no information about what was sold or bartered, or which sibling was in charge. The appellants sought to rely on photographs, and it was open to the judge therefore to note the lack of any photographs of family gatherings and the lack of any explanation with the photographs, where such ought reasonably to be available. The burden of proof is on the appellants, and it was open to the judge to not be satisfied that they had discharged that burden.
12. Whilst Counsel highlighted specific findings of the judge, these findings cannot be considered in isolation, nor can findings be 'island-hopped', but must be considered as a whole. It was not a matter of the judge identifying new issues which had not been raised to the parties in the proceedings, but rather the judge not being satisfied, as the respondent had not been, that the appellants had discharged the burden of proof, as to the claimed financial and emotional dependence.

13. Mr Wilford suggested that the judge had mischaracterised the evidence which Mr Wilford submitted indicated that the appellants were subsistence farmer, by finding that there was a 'significant agricultural enterprise. However, that is to mischaracterise Judge Manuell's findings, which were not that there was a significant agricultural enterprise, but rather that that the appellants had not discharged the burden of proof on them in respect of demonstrating family life. The judge considered all the evidence including that the witness statements from the appellant indicated that the lavatories on the farm had been improved in recent years and that there were solar panels for electricity. The judge was not finding that the appellants were not poor as claimed, but reached an adequately reasoned conclusion that was open to him, that the evidence suggested 'there must have been some profits from the farm, which had been supporting five adults'.
14. Whilst the judge was again criticised for not specifically referencing the bank statements which showed the sponsor's benefit payments, the judge did not state that there was no evidence of the benefits, rather that the sponsor's illiteracy did not explain why 'proper details' of benefit receipts/other income were not provided'. Again, this has to be considered holistically as part of overall findings on the inadequacy of the evidence in discharging the burden of proof. What weight the judge placed on the evidence before him was a matter for the judge. It was open to the judge to reach the findings that he did that he was not satisfied that the appellants had demonstrated that they were financially dependent on the sponsor, but that they were self-supporting from the family farm and that any additional money sent by the sponsor, over and above what she had sent to pay off her loan, was not part of any financial dependency. There was no unfairness in that approach. The first ground of appeal is not made out.
15. Grounds two and three argued that the judge had set the bar too high by requiring a level of evidence not necessary to meet the modest threshold for engagement with Article 8(1) and that the judge and applied the wrong test for family life, looking for 'unusual features'.
16. However, as set out in the guidance in Rai v ECO Delhi [2017] EWCA Civ 320 including at paragraph 42, the judge did in fact grapple with the questions that went to the heart of the matter, whether there was family life between the appellants and their mother.
17. The judge was aware that the sponsor and the appellants had applied for entry clearance at the same time and considered that the appellants and their unmarried siblings live together in the family home. Whilst the judge noted that this is not an uncommon arrangement anywhere, the judge was not as Mr Wilford suggested, requiring any exceptionality but was properly considering whether there were any features which amounted to real, effective or committed support. It was open to the judge, considering the evidence before him to find that there was not.
18. Whilst the judge was criticised for his wording, at paragraph [19], when considering the financial situation, for finding that there was 'not real, effective and committed dependency', whereas the test as refined in Rai is real, effective or committed support, any mistake in stating 'and' instead of 'or' is just that, a slip or mistake, not a material error. The reference to dependency in paragraph [19] rather than support, was because the judge was in that paragraph considering the financial dependency.
19. Whilst the test in Rai can be met without financial dependency, it was open to the judge to find that it was not in this case, when all the evidence had been

considered in the round. The judge had directed himself as to the relevant case law, including Rai and a fair, holistic reading of his decision discloses that he correctly applied that jurisprudence.

20. It is not the case, as suggested by Mr Woodford that the judge fell into the same error discussed at paragraph 38 of Rai where the Deputy Upper Tribunal judge had, in error “concentrated on the appellant's parents' decision to leave Nepal and settle in the United Kingdom, without, I think, focusing on the practical and financial realities entailed in that decision. “
21. Whilst the judge took into account, in the round, the decision of the sponsor to come to the UK without the appellants and that the application had been made for only 2 of her unmarried adult children, the judge did take into account, at [20] that this ‘was said to be because of the cost’. This was just one of the factors that the judge looked at and it cannot be properly said that he did not take into account the practical and financial realities in the decisions made by the family.
22. The judge summarised his findings at [21] as follows:

“It is difficult to find emotional dependency between the Appellants and their mother on the evidence presented. The Appellants are mature adults of full capacity, helping to run their family farm. There is telephone contact with their mother in the United Kingdom as frequently as can be managed (Mrs Thamsuhang needs help for that), but there is nothing special about such contact which is a mark of the ease and low cost of modern communications. Mrs Thamsuhang is elderly and possibly frail, so it is only to be expected that her daughters will wish to keep in touch when they can. That is normal enough for everyone with an elderly parent. Nothing culturally specific was identified.”

23. Whilst another judge might have expressed some of those findings in relation to: ‘no special bond beyond ordinary ties’ and that there were ‘no unusual features’, differently, it was open to the judge to find as he did that given all the factors, including the age of the appellants and their lives running a family farm together with their other adult siblings in Nepal, that there was not the requisite degree of emotional dependency proved. The judge was not looking for any exceptional features, but rather for evidence of real, committed or effective support and the appellants did not discharge that burden.
24. The judge’s findings on family life were adequately reasoned and open to him on the available evidence. I find there was no material error of law and I dismiss the appellants’ appeals.

## **Notice of Decision**

**The appeal is dismissed.**

**M M Hutchinson**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

18 August 2023