



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

**Case Nos: UI-2022-005500**  
**UI-2022-005502**

**First-tier Tribunal Nos:**  
**HU/58193/2021**  
**IA/17904/2021**  
**HU/58195/2021**  
**OA/17930/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 09 November 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**(i) Raj Kumar Rai**  
**(ii) Bet Kumar Rai**

**(NO ANONYMITY ORDER MADE)**

**and**

**Entry Clearance Officer**

Appellants

Respondent

**Representation:**

For the Appellants: Mr Daryl Balroop (Counsel)  
For the Respondent: Ms A Ahmed (Senior Home Office Presenting Officer)

**Heard at Field House on 31 July 2023**

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Cas O'Garro, promulgated on 23<sup>rd</sup> August 2022, following a hearing at Hatton Cross on 18<sup>th</sup> July 2022. In the determination, the judge dismissed the appeal, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellants**

2. The Appellants are nationals of Nepal and are siblings, and the children of a former Ghurkha. The first Appellant was born on 9<sup>th</sup> September 1972 and the second Appellant was born on 20<sup>th</sup> March 1984. They applied for entry clearance to come to the United Kingdom as the adult children of their sponsoring father, Mr Budhi Man Rai, who was granted a settlement visa as a former Ghurkhas in the UK in 2019.

### **The Appellants' Claim**

3. The essence of the Appellants' claim is that they are single, living in their sponsoring father's house in Nepal and relying upon him for financial support, as they do not work in Nepal. They are in regular contact with him by telephone and they have even been visited by their sponsoring father of the UK. Thus, they have a family life with their sponsoring father, as they were part of the family unit of their father before he left Nepal to settle in the United Kingdom (see paragraphs 8 to 9 of the determination).

### **The Judge's Findings**

4. The judge at the outset observed that it was not disputed that the Immigration Rules were of no assistance to the Appellants in their appeal so that they would have to draw upon the principles in relation to Article 8, which have been reviewed and restated in **Rai (Jitendra) v Entry Clearance Officer [2017] EWCA Civ 320**. The judge held that the Appellants are unmarried and according to the Sponsor's evidence are unemployed and living in the family home without an independent life of their own but that "safe for the sponsor's evidence and what the appellants say in their statements, I find that there is little evidence of the appellants' actual circumstances in Nepal" (paragraph 32).
5. The judge went on to say that "the appellants are both over the age of 30 and at their ages it is expected that they would be working and leading independent lives" (paragraph 33).
6. This is despite the evidence from the first Appellant in his statement: "that work is limited and the reward for working is not enough" (paragraph 34). In the end, the judge concluded that,

"I am aware that in all societies, adult children, even those who are living independent lives, turn to their parents for financial support (often referred to as 'the bank of Mom and Dad'), when there is a need for such support but I find that this this does not mean that due to this financial assistance, ... a dependency is formed" (paragraph 39).

7. The judge added that, "I appreciate that this is a case based on historic injustice" (paragraph 44), but that the appeal stood to be refused.

### **The Grant of Permission**

8. Permission to appeal was granted by the Upper Tribunal on 5<sup>th</sup> December 2022 in a renewed application. The grounds of appeal contended that the First-tier Tribunal Judge failed to properly assess whether the Appellants had Article 8(1) family life with their father. The test set out by the Court of Appeal in **Rai** was by the Judge below applied regarding whether there is a real, or committed or effective support. Given that the Appellants had a family life with their

sponsoring father, and one where they were living in the family home previously with their father prior to his departure, and also continuing to be provided with accommodation by him, it was decided that the judge below failed to take this properly into account when applying the test in **Rai** to the facts of this case. The judge also, it was contended, did not give proper weight to the thirteen money transfer receipts over the last two years, as he appeared to require a slip for each month, which was unwarranted. Permission to appeal was granted on the basis that it was arguable that with the right test having been set out by the judge, it was an error to suggest that the evidence of the Sponsor did not suffice to meet the test in **Rai**, particularly in the light of the lack of reasoning. There was an arguable failure to assess whether the Appellants had family life at the date of the hearing even if historically the second Appellant had been able to work abroad, as the judge had suggested.

### **Submissions**

9. At the hearing before me on 31<sup>st</sup> July 2023, Mr Balroop, of Counsel, began by drawing attention to paragraph 8 of the determination by the judge below which accepts that the Appellants are living in the family home, are financially supported by their sponsoring father, are not in work, and are single without leading independent family lives. This, submitted Mr Balroop, was unsurprising given that the Appellants' sponsoring father had only come to the UK in 2019 from a home in Nepal where they all lived together as a single family unit. Since then he had been remitting financial assistance to his children in Nepal. All of this formed part of the evidence before the judge (see paragraph 29). It was therefore incongruous of the judge, submitted Mr Balroop to find that this was not support "because I am aware that in all societies, adult children, even those who are living independent lives, turn to their parents for financial support ..." (paragraph 39). The fact was that the accommodation was the biggest expense that the Appellants would have and here they were still continuing to live in the home of their sponsoring father and to their being supported by him. On this basis alone, there was an error in the assessment of Article 8(1) right of the Appellants.
10. For her part, Ms Ahmed submitted that the judge was not satisfied that the support sent by the sponsoring father was real and genuine. Just because the Appellants continued to live in the family home did not mean that there was dependency by them on their sponsoring father as the evidence had to be looked at in a holistic manner. It is true that the judge noted that the Appellants were living in the family home (see paragraph 29 and paragraphs 31 - 33) but he was not satisfied that there was a dependency.
11. In reply, Mr Balroop submitted that the plain fact was that even though the Appellants lived in the family home the judge had proceeded to give no weight to this matter, choosing instead to take the view that in all societies even adult children look to "the bank of Mom and Dad" (paragraph 39). It was not possible to make a holistic assessment if this critical piece of evidence was viewed in his manner. The judge still had to make a finding that there was no family life, if the facts before him were that the Appellants were still living together in their family home, and this he had failed to do. Since the date of the decision there had been considerably more financial remittances, which the Sponsor had been able to discover, and which would demonstrate the error in the approach of the judge below.

### **Error of Law**

12. I am satisfied that the making of the decision involved the making of an error on a point of law, such that it should be set aside. My reasons are as follows. This is a case where the judge has had ample evidence before him. The Appellants are single, living in their sponsoring father's house, relying upon him for financial support, not working, and being visited by their sponsoring father, as and when he is able to do so. That evidence has been recounted by the judge at various stages during the determination. At no stage has it been discredited.
13. Second, the judge has been clear that the applicable principles in a case such as this are to be seen in the decision in **Rai [2017] EWCA Civ 320**. The importance of that case is that it makes clear that the longstanding position with respect to family life between an adult child and a surviving parent is that something more than normal emotional ties are needed, but that in the context of a case such as the present, that Rule should not be read too restrictively. The decision in **Rai** also makes clear that a relevant factor in a case such as this would be whether the adult child has formed a family life of his or her own. This is a case which is distinctive in the sense that it is to do with historic injustice. The judge refers to this (at paragraph 44). However, he then concludes that the historic injustice cannot be remedied unless the court finds that family life remains between an Appellant child and a parent. The reasons for that conclusion, particularly bearing in mind the strictures set out in **Rai**, are not sustainable.

### **Notice of Decision**

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is allowed.

**Satvinder S. Juss**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**8<sup>th</sup> November 2023**