



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000190
UI-2023-000191
UI-2023-000192
First-tier Tribunal Nos:
HU/56939/2021
HU/56940/2021
HU/56942/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 June 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

(1) CHAKRA BAHADUR PUN
(2) BINOD KUMAR PUN
(3) CHANDRA KUMARI ARMAJA

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Balroop, instructed by Everest Law Solicitors
For the Respondent: Mr Wain, Senior Presenting Officer

Heard at Field House on 13 June 2023

DECISION AND REASONS

1. The appellants appeal, with permission granted by First-tier Tribunal Judge I.D. Boyes, against the decision of First-tier Tribunal Judge Rae-Reeves. By his decision of 19 December 2022, the judge dismissed the appellants' appeals against the respondent's refusal of their human rights claims.

Background

2. The appellants are Nepalese nationals. The first two appellants are twins who are currently 51 years old. The third appellant is 43 years old. They sought to enter the United Kingdom as the dependents of their father, Mr Subhansing Pun, who served in the Brigade of Ghurkhas for fourteen years. He arrived in the United Kingdom in 2013, after the Brigade had been permitted to retire here following the decision in *R (Limbu & Ors) v SSHD & Ors* [2008] EWHC 2261 (Admin). The respondent refused the appellants' applications on 23 September 2021, finding that the appellants were unable to meet the terms of the relevant policy and that Article 8 ECHR was not engaged in its family life aspect.
3. The appellants appealed and their appeals were heard by the judge at Hatton Cross on 16 December 2022. The appellants were represented at that hearing by Mr Balroop of counsel. The respondent was unrepresented.

The Decision of the First-tier Tribunal

4. In his reserved decision, the judge made the following findings of fact. The appellants were three of five siblings and there was 'considerable family life and community in Nepal'. The three appellants worked as subsistence farmers of arable and livestock. They lead a hard life. The sponsor provided funds to the appellants and remained in touch with them. The appellants are single and live in the sponsor's house.
5. The judge had sympathy with the appellants but did not accept that they enjoyed a protected life with the sponsor. There may have been a family life in 2013 but there was not now. Whilst the appellants lived in the sponsor's house and received money from him, there was no evidence of what the funds were used for. Proving funds was 'commendable but does not alone establish family life'. The appellants were unmarried but they had the benefit of each other and, as subsistence farmers, they had a level of independence 'even though their father continues to provide them with funds and owns the land and house'. The appellants' ages were a relevant factor but were not conclusive.

The Appeal to the Upper Tribunal

6. In his grounds of appeal to the Upper Tribunal, Mr Balroop submitted that the only conclusion which was properly open to the judge on the findings of fact he had reached was that the sponsor provided the appellants with real or committed or effective support and that Article 8 ECHR was therefore engaged in its family life aspect: *Rai v ECO (New Delhi)* [2017] EWCA Civ 320.
7. In granting permission to appeal, Judge Boyes said that the grounds were clearly arguable.
8. In submissions, Mr Balroop was content to rely on his detailed grounds of appeal.
9. Mr Wain for the ECO confirmed that there was no response to the grounds of appeal under rule 24 of the UT Rules. He submitted that the judge was plainly aware of the law and had not suggested that there was any need for exceptional dependency. There was no evidence of what the sponsor's funds were used for; the appellants were in their forties or fifties and they had a level of independence.

The judge had been entitled to find that there was no emotional dependency and to find that there was no protected family life.

10. In reply, Mr Balroop submitted that the difficulty with the decision lay in the assessment of the evidence. The finding that the appellants had a level of independence was peculiar; they lived in the sponsor's house; they farmed the sponsor's land; and they received the sponsor's money. The judge had failed to understand that the threshold for the engagement of Article 8 ECHR was a low one, as made clear in *AG (Eritrea) v SSHD* [2007] EWCA Civ 801; [2008] 2 All ER 28.
11. I reserved my decision at the conclusion of the submissions.

Analysis

12. The respondent chose not to attend the hearing before the First-tier Tribunal and the sponsor was not cross-examined. There was no reason on the face of the documentary evidence for the judge to disbelieve anything that he was told by the sponsor, whose service record shows that his military conduct was exemplary. Quite rightly, therefore, the judge accepted all that he was told about the appellants' circumstances in Nepal.
13. Having accepted that evidence, the judge accepted that the appellants live and have always lived in the sponsor's house. He accepted that they are subsistence farmers and that they have never had any other employment. He must have accepted what was said in the appellants' statements about their farming, which was that they were unable to produce enough food to sell and that what they produced was not even sufficient for them to survive. The judge must also have accepted that the sponsor remits money to the appellants and it is this money which they withdraw once a month, thereby enabling them to buy the additional goods which they need in the local town (which is actually an appreciable walk away). The third appellant stated in her witness statement that it was her father's pension which 'has enabled us to have food, clothes and essential needs'. Again, the judge must be taken to have accepted that evidence.
14. Although the judge accepted all of this evidence, he felt that the appellants had a degree of independence from the sponsor. The judge obviously had the benefit of hearing the sponsor's evidence and it was for him to reach findings of fact on that evidence. Taking full account of that benefit and of what was recently said by Lewison LJ in *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48, however, I regret to say that I am unable to understand how the judge reached the conclusion that the appellants have a degree of independence from the sponsor. They live on the other side of the world but, that aside, they are dependent upon him in every way. He provides them with a home, clothing and with money to buy the food which they are unable to grow or rear.
15. Whilst the judge directed himself to the test of 'real or committed or effective support' from *Jitendra Rai*, the basis upon which he concluded that this test was not met was irrational. There was evidence of what the sponsor's funds were used for; it was set out in the appellants' statements, as summarised above. There was no proper basis upon which to conclude that the appellants had a degree of independence from the sponsor. The absence of regular contact between the appellants and the sponsor did not detract from the fact that they receive actually rather more in monetary terms than real or committed or

effective family support. The only rational finding open to the judge, upon his having accepted what was said in the witness statements, was to accept that there was a family life between the appellants and the sponsor.

16. In the circumstances, I will set aside the judge's conclusion that Article 8(1) was not engaged in its family life aspect. I will remake the decision on the appeal without a further hearing because the judge's findings of fact are determinative of the only real question in this appeal. Despite the ages of the appellants, there is a family life between them and the sponsor and Article 8 ECHR is engaged in its family life aspect. That conclusion is determinative of the appeal because the historic injustice perpetrated against the Brigade of Gurkhas was such as to outweigh the basic interest in immigration control: *Gurung v SSHD* [2013] EWCA Civ 8; [2013] 1 WLR 2546.

Notice of Decision

The First-tier Tribunal erred in law in dismissing the appeal. Its decision is set aside. I remake the decision on the appeal by allowing each appeal on Article 8 ECHR grounds.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 June 2023