



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001042

First-tier Tribunal No: HU/53530/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 September 2023

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

DAL PRASAD PAIJA PUN
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr E Wilford, instructed by Everest Law Solicitors

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 15 September 2023

DECISION AND REASONS

1. The appellant is a citizen of Nepal born on 24 May 1971. His appeal against the refusal of entry clearance was dismissed by First-tier Tribunal Judge J C Hamilton on 3 January 2023 on human rights grounds. For the reasons given in the Upper Tribunal decision of 14 June 2023, the decision of the First-tier Tribunal was set aside and adjourned for re-hearing before the Upper Tribunal.
2. The appellant applied for leave to enter the UK as an adult dependant of the widow of a former Gurkha soldier. His application was refused on the grounds he could not satisfy the immigration rules and there was insufficient evidence to

establish family life. In the alternative, the respondent concluded there was no historic injustice and the refusal was proportionate.

3. It was accepted the appellant could not satisfy the immigration rules. The issue before me was whether family life exists between the appellant and his widowed mother, Suttara Paija Pun ('the sponsor').
4. The following findings, made by the First-tier Tribunal, were preserved:
 - (a) it was likely that family ties were close,
 - (b) the sponsor is a relatively elderly lady,
 - (c) there was medical evidence which showed that the sponsor had significant health issues (the respondent accepted she had lung cancer),
 - (d) the sponsor visited Nepal regularly,
 - (e) it is likely the sponsor spent time with the appellant in Nepal which is consistent with the sponsor's claim that they are emotionally dependent on one another,
 - (f) the sponsor has been trying to help the appellant come to the UK which was consistent with her claim to be supporting him financially, and
 - (g) it is likely the appellant and sponsor are in regular contact which could be consistent with emotional dependency.
5. The parties agreed that, on the uncontested evidence, the appellant had shown that Article 8(1) was engaged and, following Ghising and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 567 (IAC) at [59] and [60], the refusal of entry clearance was disproportionate.
6. Accordingly, I find that the appellant has established family life with the sponsor, his mother, and the weight to be attached to the historic injustice outweighs the public interest in this case. The refusal of entry clearance is disproportionate in the circumstances. I allow the appellant's appeal.

Notice of Decision

The appeal is allowed

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 September 2023