JR-2023-LON-002136

In the Upper Tribunal
(Immigration and Asylum Chamber)
Judicial Review

In the matter of an application for Judicial Review

THE KING
on the application of
URMILA BALAMPAKI MAGAR

Applicant

versus

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ORDER

BEFORE Upper Tribunal Judge Kopieczek

HAVING considered all documents lodged and having heard Mr D. Balroop of counsel, instructed by Bond Adams Solicitors, for the applicant and Mr M. Biggs of counsel, instructed by the Government Legal Department for the respondent, at a hearing on 20 May 2024, there being no appearance by either party at the handing down of the judgment on 24 July 2024, their attendance having been excused.

IT IS ORDERED THAT:

1. The application for judicial review is refused for the reasons in the attached judgment.

2. The applicant appears to accept that an order for costs in favour of the respondent is appropriate in the circumstances. However, the applicant is not content with the amount of costs sought by the respondent in the schedule of costs served. Accordingly, a summary assessment of costs is not possible.

3. In the circumstances, there will be a detailed assessment of the respondent's costs on the standard basis.

4. Although no reasoned application for permission to appeal to the Court of Appeal has been made, with the applicant merely formally relying on the submissions made during the course of the hearing, I am required to consider the matter of permission in any event.

5. Permission to appeal to the Court of Appeal is refused, there being no arguable error of law in the decision.

Signed: *A. M. Kopieczek*

Upper Tribunal Judge Kopieczek

Dated: 24/07/2024

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 29/07/2024

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2023-LON-002136

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

Judgment handed down on 24 July 2024

Before:

UPPER TRIBUNAL JUDGE KOPIECZEK

- -

Between:

THE KING
on the application of
URMILA BALAMPAKI MAGAR

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

Mr D. Balroop
(Counsel instructed by Bond Adams Solicitors), for the applicant

Mr M. Biggs
(Counsel instructed by the Government Legal Department) for the respondent

Heard at Field House on 20 May 2024

- -

J U D G M E N T

- -

Judge Kopieczek:

INTRODUCTION

1. The applicant is a citizen of Nepal. She challenges the respondent's decision dated 11 July 2023 to revoke her indefinite leave to enter ("ILE") pursuant to section 76(2) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

2. The main elements of the applicant's immigration history are as follows. On 16 October 2018 the applicant was granted ILE as an adult dependent child of a former Gurkha soldier. On 1 February 2021 her husband, Karmal Darlami, made an entry clearance application as her partner. On 17 April 2023 the applicant was written to by the Home Office to notify her that consideration was being given to revoking her ILE and inviting representations.

3. Having received representations, the respondent nevertheless proceeded to revoke ILE pursuant to s.76(2) of the 2002 Act on 11 July 2023.

THE RESPONDENT'S DECISION

4. I quote parts of the respondent's decision as follows.

> **Reasons for decision**
>
> **Your Indefinite Leave has been revoked for the following reasons.**
>
> On 16 July 2018, you submitted an Entry Clearance Application to join your parents in the UK. You stated the following in the additional information section on your application form;
>
> > "My father moved to the UK on 01 Aug 2012 and he got me a place in rent in Jhapa, Damak where I am currently residing. I could not apply with him immediately because the rule only announced on January 2015 and my name was not updated in kindred roll. Now my name is registered in kindred roll hence I am applying to join my father in the UK as I am still single and unemployed and without any source of income. All my close relatives are living their independent life and they can not support me financially and emotionally as well like my father. Grateful if you consider my case under the immigration rules for adult dependent child of UK former Ghurkha where I am single and without any job or source of income and emotionally and financially dependent on my parents. Thank you."
>
> On 02 October 2018, you were granted Indefinite Leave to Enter the UK in the identity of Urmila Balampaki Magar, (Nepal, born on 25 August 1987).

On 01 February 2021, your husband Kamal DARLAMI, (Nepal, born on 09 April 1986) submitted a partner Entry Clearance application. Kamal DARLAMI stated the following on his application form;

“Sponsor Details

Given Names: **Urmila**

Family Name: **Balampaki Magar**…

… Have you met Urmila Balampaki Magar? **Yes**

When did you first meet Urmila Balampaki Magar? **April 2007**

When did your relationship begin? **December 2007**. . .

Does Urmila Balampaki Magar have any children? **Yes – Ukina Darlami (Nepal, 07 September 2009)**

Uken Darlami (Nepal, 13 February 2015). . .”

…

Having considered all aspects of the case detailed above it is considered appropriate to pursue revocation of your ILE.

Your representatives, Bond Adams LLP Solicitors stated in their NOI Response dated 15 June 2023;

> *“We have taken further instructions from our client and now confirm that her position is, she has not obtained indefinite leave to enter 10 70 203 by deception. We note that the Secretary of State has alleged that our client had failed to disclose relevant information about her partner and children in her application which was material to her grant of ILE. We note from the Visa Application Form (“VAF”) submitted by our client for indefinite leave to enter on 10 July 2018, following information was submitted by our client,*
>
> ***PART 3 > FAMILY DETAILS SPOUSE / PARTNER***
>
> *43 WHAT IS YOUR MARITAL STATUS? SINGLE*
>
> ***DEPENDENT CHILDREN***
>
> *54 DO YOU HAVE ANY DEPENDENT CHILDREN? NO*
>
> ***NON DEPENDENT CHILDREN***
>
> *55 ARE ANY OTHER CHILDREN TRAVELLING WITH YOU? NO*

> *Our client confirmed that, on the date of application, as the facts show, she was single as she never married. She did not have dependent children as she was separated from her partner and the children were staying with partner and were not dependent on her. She did not have any non-dependent children who were travelling with her. It is her position she had answered all questions in the application form as per her best knowledge and facts stands on the date of application. She has not been asked any further questions except the above and she should be not expected to provide information beyond the questions being asked in visa application form."*

It is considered that you have been complicit in exercising deception. Your husband, Kamal DARLAMI stated that your relationship began in December 2007. Kamal DARLAMI's Entry Clearance application is noted with following;

> ***"Sponsor states that they did not declare applicant or children on their application because their relationship was a secret as they were not married and unemployed and dependent on their father – they also state that an agent advised them not to disclose their relationship or children…"***

> ***"Indefinite leave to enter***

> ***1. 45. Entry clearance and indefinite leave to enter as the child of a member of HM Forces will be granted to an applicant who:***

> *1. (a) was either: 1.*

> *(i) under 18 years of age at the date of application; or*

> *2. (ii) aged 18 or over at the date of application and was last granted leave to enter or remain under paragraph 43 or 47 of this Appendix or paragraph 276AH of these Rules;*

> *2. (b) is outside the United Kingdom;*

> *3. (c) is not married or in a civil partnership;*

> ***4. (d) has not formed an independent family unit;***

> ***5. (e) is not leading an independent life;***

> *6. (f) has made a valid application for entry clearance and indefinite leave to enter as the child of a member of HM Forces;"*

It is considered that, at the time you applied for Indefinite Leave to Enter you had formed an independent family unit with

Kamal DARLAMI, (Nepal, born on 09 April 1986). As stated, you had two children prior to your grant of leave, Ukina Darlami (Nepal, 07 September 2009) and Uken Darlami (Nepal, 13 February 2015). You claimed that your reason for not declaring your relationship with Kamal DARLAMI or your children on your application was because your relationship was a secret. Had the caseworker known you had a partner and two children you would not have met the requirements necessary for the grant of leave.

You also stated that an agent advised you not to disclose your relationship or your children when submitting your entry clearance application. You signed and dated the following declaration;

> *"I am also aware that my application will be automatically refused and I may be banned from going to the UK for 10 years if I use a false document, lie or withhold relevant information. I may also be banned if I have breached immigration laws in the UK.* ***I am further aware that should I use a false document, lie or withhold relevant information my details may be passed to law enforcement agencies. . ."***

It is not considered that there are any discretionary factors that should be taken into account in your favour due to your age when submitting your Entry Clearance Application. You were over 30 years of age at the time of submitting the application and will have been well aware of the information you were providing.

It is considered that your deception was material to your grant of Indefinite Leave to Enter. Failing to disclose material facts allowed you to obtain a grant of leave that you would not have been entitled to had you been truthful on your Entry Clearance Application. As stated, you have admitted you did not disclose this information as an agent advised you not to do so.

Compassionate Circumstances

It is accepted that you have been resident in the UK since 2018, however, this is a period of time in which you have exercised deception. During this time, you have taken advantage of all the benefits that a grant of ILE affords you.

Your partner and two children are residents of Nepal. It is accepted, that due to the time they have resided there, they will have an established family and private life. Therefore, it is not considered unduly harsh for you to return to Nepal and re-join your family unit.

In terms of your family and private life, consideration has only been given as to whether your ILE should be revoked and not

> whether you should be removed from the United Kingdom. The decision to revoke remains proportionate when considering public interest in tackling abuse in the immigration system and stopping people gaining an unfair advantage through deception over those who comply with the law.
>
> Any human rights grounds will be considered further when you are contacted with regard to your liability for removal from the United Kingdom.
>
> Having considered fully your compassionate circumstances and weighed this up against your deception, it is not considered disproportionate to revoke your Indefinite Leave to Enter in the United Kingdom.
>
> **Conclusion**
>
> Having considered all aspects of this case detailed above, it is concluded that you have clearly exercised deception during your time in the UK, and as a result obtained ILE which gave you access to the benefits and employment prospects this brings.
>
> Overall, it is considered that the decision to revoke your ILE status is the most appropriate outcome of this referral, at this time.

5. The essence of the respondent's decision, therefore, is that the at the time of the application for entry clearance the applicant was not single as she claimed, and had formed an independent family unit, and had a partner and two children, contrary to what was said on the application form.

THE GROUNDS OF APPEAL

6. The grounds of appeal outlined at para 4 of the grounds are twofold. The first ground is that the decision is *Wednesbury* unreasonable as the respondent had failed to discharge the burden of proof. The second ground is that the decision breaches the principles of procedural fairness.

7. The grounds assert that the respondent's approach to the assessment of the application is perplexing, citing *E v Secretary of State for Home Department* [2004] EWCA Civ 49. It is contended that the respondent "failed to distinguish the facts placed before her" and failed to engage with legal points raised by the applicant's legal representative in their letter dated 15 June 2023 (referred to in the respondent's decision).

8. The grounds rely on *AA (Nigeria) v Secretary of State for the Home Department* [2010] EWCA Civ 773, purporting to quote para 65 of

that decision but what is quoted at para 7 of the grounds is not a direct quotation from para 65 at all, or indeed from any paragraph of the Court of Appeal's decision notwithstanding that the passage is put in quotation marks.

9. It is asserted at para 7 that the respondent's finding in relation to deception is erroneous in that the respondent

> "never progressed beyond considering the issue whether this Applicant has falsely/dishonestly stated that she has no "*DEPENDANT CHILDREN"* which applied only to deliberate lies, OR, this statement was merely not in accordance with the true facts. The respondent has erred by failing to distinguish this material fact the in law" (sic).

10. The assertion that the respondent failed to engage with the applicant's representatives' letter of 15 June 2023 accepts that the matters advanced by the representatives were noted by the respondent, and the grounds quote parts of the application form responses given by the applicant, which the respondent also noted in her decision. It is contended that the applicant's position was very clear, namely that on the date of the application she was single and never married. She did not have dependant children as she was separated from her partner and they were not dependent on her. In addition, she did not have any non-dependent children who were travelling with her.

11. The applicant's position is stated as being that she answered all questions on the application form "as per her best knowledge and facts stands on the date of the application". It is asserted that the applicant was not asked any further questions and she should not have been expected to provide information beyond the questions asked on the application form.

12. The last paragraph of the grounds asserts a failure on the part of the respondent to exercise her discretion in the applicant's favour, stating that there is a clear legal duty on a decision-maker under the common law to inform himself properly and adequately before he can move to a position of making a decision. Reference is made to the need for the respondent to take into account all relevant matters and discount irrelevant matters.

13. The grounds contend that the respondent must then ask whether the decision is proportionate and fair in all the circumstances, and that the respondent was reminded by the legal representative that the applicant was already a victim of historic injustice, and but for that injustice the applicant would have been born a British citizen.

SUBMISSIONS

14. The following is a summary of the parties' oral submissions. Both parties agreed that the determination of the application for judicial review depends on a consideration of precedent fact.

15. In preliminary submissions, Mr Balroop indicated that no oral evidence was to be called and there was no application to rely on the applicant's or her (now) husband's latest witness statement. The applicant was not present, and in any event a Nepalese interpreter would be required, Mr Balroop indicated. Mr Balroop stated that his instructions were not to seek an adjournment and to proceed with the hearing. Mr Balroop said that nothing in the witness statement was a surprise for the respondent but accepted that the respondent had been entitled to ask for the applicant to attend for cross-examination. Nevertheless, Mr Balroop said that the applicant's case would not involve reliance on the witness statements of the applicant or her husband, but on the other material before the court.

16. Mr Biggs referred to the directions given by Upper Tribunal Judge Perkins which required an application to rely on further evidence, which thus included the witness statements of the applicant and her husband.

17. Mr Biggs also raised an issue in relation to the way the applicant's case is pleaded in that there is no precedent fact argument advanced in the grounds. The challenge is on a *Wednesbury* basis. In addition, there is no 'materiality' argument advanced in the grounds, which is raised in the applicant's skeleton argument.

18. Mr Balroop submitted that the issue was whether deception was used and the applicant's case is that it was not. He accepted that there was no argument based on precedent fact, but only on *Wednesbury*.

19. Mr Balroop relied on his skeleton argument, although I should point out that the skeleton argument relies extensively on the applicant's and her husband's witness statements which were not adduced in evidence.

20. With reference to the application for entry clearance and the applicant's solicitors' correspondence, it was submitted that the applicant was entitled to say that she was not in an independent family unit in terms of the respondent's policy guidance. Reference was made to the pre-action protocol correspondence in terms of the submission that the applicant answered the questions on the application form honestly.

21. The applicant only married in 2019 and at the time of the application she was no longer in a relationship with the children's father. The respondent's pre-action protocol response indicates that the most appropriate response on the application form was 'separated' but, Mr Balroop submitted, that would apply where there was a marriage and there was separation pre-divorce. The term 'separated' would not apply where a person has a partner and she separates from the partner, he argued. It was further submitted that even if there was a live-in partner and the couple separate, the appropriate option on the form is to state that the applicant is 'single'. On a balance of probabilities, therefore, the applicant was not required to indicate that she was separated.

22. Similarly, as regards the question about dependent children, it was correct for the applicant to answer 'no', Mr Balroop submitted, because the children were living with her partner. The decision letter did not deal with that matter, he argued. It was submitted that nothing on the form called for information about the applicant's partner or children.

23. The letter from the applicant in support of her husband's entry clearance application needs to be read in its full context, it was submitted. She stated that she had to keep the relationship from her family and that she relied on the agent's advice. Those parts of the applicant's letter were taken out of context by the respondent, Mr Balroop submitted. In addition, the applicant stated in that letter that she did not realise that she had to give details of her children even though they were not part of her application, and she relied on the agent's advice that she did not need to disclose their details.

24. Mr Balroop submitted further, that if the respondent's argument is that additional information should have been given on the application form, there is no authority for that proposition.

25. In his submissions Mr Biggs referred to *Abbas, R (On the Application Of) v Secretary of State for the Home Department* [2017] EWHC 78 as authority for the proposition that where s.76(2) of the 2002 Act is invoked on the basis of deception, the issue must be determined on a precedent fact basis.

26. An application such as that made by the applicant for entry clearance as an adult dependant of an ex-Gurkha soldier would frequently be unsuccessful on the basis that a person has an independent family life and thus there would be no dependency on the ex-Gurkha father, it was submitted. In this case the applicant gave the impression that she did not have an independent family life.

27. Relying on Matusha, *R (on the application of) v Secretary of State for the Home Department (revocation of ILR policy)* [2021] UKUT 175 (IAC), Mr Biggs submitted that deception can include a failure to disclose material facts.

28. Mr Biggs took me to the respondent's decision dated 11 July 2023 in terms of the additional information section of the application form where the applicant stated that her father got an address for her in 2012 and that she was still single. It was submitted that this clearly implies that she had not formed a relationship with anyone. However, she had been with her partner since 2007 and had two children with him. There was, Mr Biggs submitted, an extremely convenient gap in the relationship which was then apparently resolved whilst she was in the UK.

29. Mr Biggs invited me not to accept the explanation that the applicant gave. In any event, it was submitted, the onus was on the applicant to make it clear that she had a former partner with whom she had two children.

30. It was submitted that the respondent did take into account the email representations from the applicant's solicitors of 15 June 2023 which are set out in full in the respondent's decision. Furthermore, the respondent did consider the exercise of her discretion in the decision.

31. Referring to the applicant's letter dated 26 January 2021 in support of her husband's application for entry clearance, Mr Biggs pointed out that there is no mention in that letter of any separation. The evidence of separation comes only from the applicant's witness statement which has not been admitted in evidence. The assertion in the email from the applicant's solicitors dated 15 June 2023 that the couple separated is not supported by any actual evidence. Furthermore, Mr Biggs submitted, the assertion in the applicant's 26 January letter that the agent told her not to disclose on her application that she had children is an admission that she deliberately did not do so. The applicant had made a false statement on the application form in terms of her partner and children and it is no excuse that she was following the advice of an agent.

32. The answer to question 22 on the application form in terms of how long she had lived at her address is inconsistent with the case that is now advanced, he submitted. The statement on the application form that she is 'still single' is also inconsistent with the assertion that she had been in a relationship and that they separated.

33. Mr Biggs pointed out that the applicant's case is pleaded in terms of *Wednesbury* and on that basis, he submitted, the respondent was plainly entitled to make the decision that she did.

34. Mr Biggs further submitted that the applicant has completely failed in her duty of candour in that there were factual circumstances known to the applicant which she has failed to set out in an "evidential form". The two witness statements from the applicant and her now spouse have not been adduced as a result of a deliberate decision by the applicant. The applicant has, therefore, he submitted, failed to establish her case.

35. In terms of whether the case should be decided on the basis of precent fact or *Wednesbury*, Mr Biggs submitted that the applicant should not be in a stronger position than she would be had she adduced evidence. The allegation of dishonesty is completely unanswered, he submitted.

36. In reply, Mr Balroop submitted that *Abbas* was a very different case that related to false representations and, relying on *AA (Nigeria)*, he submitted that there must be intent to deceive. *Matusha*, could also be distinguished on a similar basis, it was submitted.

37. Mr Balroop argued that the respondent's case of implicit deception was not made out in this case.

38. As regards the duty of candour, Mr Balroop submitted that the applicant could not have been expected to say more about her circumstances. Even if she had formed a family life at one stage that does not mean that she would have failed to meet Annex K of the Immigration Rules or Article 8. It was finally submitted that there was no need on the facts for oral evidence to be given.

ASSESSMENT AND CONCLUSIONS

39. S.76(2) of the 2002 Act provides as follows:

> "**Revocation of leave to enter or remain**
> …
> (2) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if—
> (a) the leave was obtained by deception"

40. The power to revoke in these circumstances is clearly discretionary.

41. Both parties before me agreed at the outset that the decision on the application for judicial review is to be made on a precedent fact basis given that a condition precedent for the exercise of the

power to revoke is the existence of deception. There was no dispute on behalf of the applicant that the relevant principles to be applied are correctly set out in *Abbas* at para 7, in particular for the purposes of this application, in the last two bullet points:

- The legal burden of proving that the Claimant used deception lies on the Secretary of State albeit that there is a three stage process. The Secretary of State first must adduce sufficient evidence to raise the issue of fraud. The Claimant has then a burden of raising an innocent explanation which satisfies the minimum level of plausibility. If that burden is discharged, the Secretary of State must establish on a balance of probabilities that this innocent explanation is to be rejected.

- There is one civil standard of proof (which is the standard to be applied). The seriousness of the consequences does not require a different standard of proof but flexibility in its application will involve consideration of the strength and quality of the evidence. The more serious the consequence, the stronger must be the evidence adduced for the necessary standard to be reached.

42. At the heart of the respondent's decision to revoke the applicant's ILE is the contention that on her application form for entry clearance as an adult dependant relative she used deception by claiming to be single and not to have formed an independent family unit. I have set out the relevant parts of the respondent's decision at para 4 above.

43. One of the several difficulties for the applicant in these proceedings is the way that the grounds are pleaded. It is agreed that this is a case of precedent fact. The grounds, however, do not advance any argument on a precedent fact basis, or at best there is only a sliver of such a challenge. There was no application to amend the grounds of claim which, subject to considerations of timeliness and costs, could have been entertained even on the day of the hearing itself.

44. Related to the above is the matter of the witness statements from the applicant and her (now) husband. These are dated 26 February 2024. In her witness statement the applicant explains how she and her husband were living together but not married and that they had their two children born in September 2009 and February 2015. She states that initially she had to keep her relationship with him secret from her parents as they would not have approved, but she eventually had to tell them after she became pregnant. She started living with her partner in his parents' house. She always wanted to get married but he did not. The fact that he would not marry her eventually led to their relationship breaking up in 2015 and she left his parents' home to live alone with the support of her own

parents, and her father sent her money to rent a room. The witness statement says that she was not in contact with her partner or her children after she left and relied on her parents for survival.

45. She goes on to explain that background as the reasons for the answers she gave on her entry clearance application form and the advice she was given by the agent as to what to put on the form. After she came to the UK in 2018 and started living with her parents she rekindled her relationship with her partner and they married in October 2019 in Nepal. The applicant's husband's statement is in similar terms.

46. However, as already indicated in my summary of the parties' oral submissions, it was accepted on behalf of the applicant that no application had been made to admit those witness statements in evidence. It was accepted that such an application was required given the (standard) directions in the grant of permission.

47. In the respondent's skeleton argument dated 13 May 2024 it is pointed out that permission to rely on the witness statements had not been granted (no application had been made to rely on them). The skeleton argument states that if the witness statements were admitted the respondent would seek permission to cross-examine the witnesses because the account in the witness statements was not accepted.

48. It is not necessary to explore the challenges of receiving evidence from Nepal. The significant point is that a choice has been made that the applicant, who lives in England, would not give evidence in support of any explanation for what was put on her application form in 2018.

49. Those witness statements are not, therefore, in evidence before me and cannot be taken into account.

50. One can understand Mr Biggs' concern, expressed in submissions, that evidence that has not formally been adduced contains information that runs contrary to explanations previously advanced, and thus preventing his being able to make submissions on any inconsistencies or implausibility. Nevertheless, the failure to put the witness statements in as evidence has obvious other consequences in terms of any explanation offered by the applicant for what appears on the 2018 application.

51. On the basis that the issue in this application for judicial review is to be determined as precedent fact, and on the basis that the applicant does not advance any argument in the grounds on the

basis of precedent fact, the claim cannot succeed. I consider the matter further below, however.

52. As regards the contention that the applicant has failed in her duty of candour, I was not referred to any authorities on the point. Understandably, given the stance taken on behalf of the applicant at the hearing, the asserted breach of the duty relates to the failure to adduce evidence by way of witness statements in relation to factual circumstances known to the applicant. A recent analysis of the principles of the duty of candour is to be found in *Police Superintendents' Association, R (On the Application Of) v The Police Remuneration Review Body & Anor* [2023] EWHC 1838 (Admin).

53. It seems to me that there is some merit in Mr Biggs' complaint in this respect. I acknowledge the point but it is not necessary for me to examine its implications further in this case beyond finding that the applicant could, but chose not to, adduce evidence in the form of witness statements and oral evidence.

54. I did not hear detailed argument from the parties on the question of whether there is scope for any other ground of challenge, apart from precedent fact. However, in the absence of argument I am prepared to accept the possibility that other grounds of challenge may be open to an applicant in a case which would, ordinarily, be challenged on a precedent fact basis. One can conceive of a case where the decision making is so flawed for other public law errors that such other grounds could be advanced.

55. As regards the grounds as pleaded, I do not accept that there is *Wednesbury* unreasonableness in the decision. The contention that there was a failure to "distinguish the facts placed before her" has no merit. The respondent plainly did consider the facts before her in the context of what the applicant sought, and obtained, in her entry clearance application, and the information given on the application form that led to the grant of leave.

56. The suggestion that the respondent "failed to properly engage with the legal points raised by the legal representative in his email dated 15 June 2023" is similarly misconceived. The respondent's decision referred to the email, summarised it, and considered the issues raised in the context of the specific information given by the applicant in response to specific questions on the application form. The grounds in this respect do nothing other than demand that the respondent accept the facts as asserted, and the argument that the applicant's answers were not deceptive. The respondent's decision was properly reasoned in terms of the information that the applicant gave, or did not give, on the application form.

57. Although the grounds contend at para 12 that "It is simply unfair and discriminatory" to expect the applicant to go beyond the questions asked on the application form, Mr Biggs pointed out the applicant's answer to question 79. There it states the following:

> "**ADDITIONAL INFORMATION**
>
> 79 IS THERE ANY OTHER INFORMATION YOU WISH TO BE CONSIDERED AS PART OF YOUR APPLICATION?
>
> MY FATHER MOVED TO THE UK ON 01 AUG 2012 AND HE GOT ME A PLACE IN RENT IN JHAPA, DAMAK WHERE I AM CURRENTLY RESIDING. I COULD NOT APPLY WITH HIM IMMIDIATELY BECAUSE THE RULE ONLY ANNOUNCED ON JANUARY 2015 AND MY NAME WAS NOT UPDATED IN KINDRED ROLL. NOW MY NAME IS REGISTERED IN KINDRED ROLL HENCE I AM APPLYING TO JOIN MY FATHER IN THE UK AS I AM STILL SINGLE AND UNEMPLOYED AND WITHOUT ANY SOURCE OF INCOME. ALL MY CLOSE RELATIVES ARE LIVING THEIR INDEPENDENT LIFE AND THEY CAN NOT SUPPORT ME FINANCIALLY AND EMOTIONALLY AS WELL LIKE MY FATHER. GRATEFUL IF YOU CONSIDER MY CASE UNDER THE IMMIGRATION RULES FOR ADULT DEPENDENT CHILD OF UK FORMER GURKHA WHERE I AM SINGLE AND WITHOUT ANY JOB OR SOURCE OF INCOME AND EMOTIONALLY AND FINANCIALLY DEPENDENT ON MY PARENTS".

58. The applicant could have been expected to explain that she had been in a relationship that had broken up. She plainly did give thought to providing additional information as she offered some such information in answer to the above question. Furthermore, Mr Biggs was right to point out that the applicant's assertion that "I am still single" in the above answer, implies that she had never been in a relationship, still less one that resulted in her having two children.

59. Similarly, I do not accept the contention in the grounds at para 13 on the question of discretion. The way that the argument is put in the grounds is, at best, unclear. It is asserted that the respondent "failed to exercise her discretion in the Applicant's favour". However, there was no legal duty on her to do so. Contrary to what is asserted, the respondent did inform herself "properly and adequately" before making her decision. Express consideration was given to whether there were any discretionary factors at play.

60. The grounds contend that the respondent should have taken into account that the applicant "is already a victim of historic injustice" and but for that injustice she would have been born a British citizen. However, what facts underlie that contention are not disclosed. The mere fact that the applicant's father was permitted settlement as an ex-Gurkha soldier does not of itself establish that

the applicant was a victim of historic injustice, or that she would otherwise have been born a British citizen. Quite apart from that, the logic of the applicant's argument is that false, misleading or deceptive statements in a visa application form can be overlooked in such circumstances.

61. As regards the 'materiality' argument set out in the applicant's skeleton argument from para 22, as Mr Biggs pointed out that is not a matter that is in the original grounds and there has been no application to amend the grounds. In any event, the argument has no merit. It was plainly relevant to the 2018 application for entry clearance as an adult dependent that the applicant represented that she was single, and did not disclose that she had children. It was relevant to whether she was dependent on her father, and whether she had family life with him under Article 8, or whether she had family life in an independent family unit with her partner and their two children.

62. I am not satisfied, therefore, that there is any merit in the grounds of claim.

63. Otherwise, in case it should be contended that irrespective of the grounds, or in case there is some precedent fact argument in them, however opaque, I have also considered the case on a precedent fact basis.

64. In the applicant's letter dated 26 January 2021 in support of her husband's application for entry clearance to join her in the UK, the applicant states that she met her husband in 2007. They started a relationship but did not get married, and had two children born in 2009 and 2015. She had to keep the relationship secret from her family as her father wanted her to marry someone that he chose for her. She was unemployed and dependent on her father so did not dare disclose the relationship.

65. She goes on to state that she filled in her entry clearance application with the help of an agent who filled in the application form and that "At that time, I did not realize that I had to give details of my children too even though they were not part of my application. I relied on agent's advise not to disclose."

66. She then states that living apart from her husband made them realise how much they loved and cared for each other. They decided to get married, which they did in Nepal in October 2019, after she had been granted ILE and had come to the UK.

67. In the email from her representatives dated 15 June 2023 in response to the proposed revocation of her ILE, it states that on

the date of her application for ILE she was single as she was never married. She did not have dependent children as she was separated from her partner and the children were staying with her partner and were not dependent on her.

68. There is no evidence in any witness statement that can be taken into account, for the reasons already explained. There was no oral evidence from the applicant.

69. In the respondent's revocation decision it notes what is said on the applicant's husband's visa application form, namely that:

> "Sponsor states that they did not declare applicant or children on their application because their relationship was a secret as they were not married and unemployed and dependent on their father – they also state that an agent advised them not to disclose their relationship or children…"

70. The applicant's letter of 26 January 2021 says nothing about being separated from her then partner at the time of the application. She states that she had to keep the relationship secret from her family. She states that she did not realise that she had to give the details of her children too, even though they were not part of her application. She does not state that she had no contact with the children. She states that she relied on the agent's advice not to disclose.

71. On the basis of that letter, it is clear that the applicant chose not to disclose that she had a partner, because she wanted to keep her relationship secret. She also chose not to disclose that she had children. Her alleged reliance on advice from an agent not to disclose potentially relevant information makes no difference to the fact that her answers were not true.

72. In addition, what that letter says is inconsistent with her 2018 application at question 43, that she was single and at question 79 that she is "still single".

73. Furthermore, the applicant's letter explaining what she put on the application form is also inconsistent with the email from her solicitors dated 15 June 2023, said to be the result of having taken further instructions from the applicant. The explanation there offered for what the applicant wrote on the application is that she and her partner were separated at the time of the application and the children were staying with her partner and were, therefore, not dependent on her.

74. Aside from the inconsistencies to which I have referred, I do not accept the contention that the only option on the dropdown answer menu on the application form was for the applicant to state that she was single. In submissions on behalf of the applicant it was submitted that other options in answer to question 43 “What is your marital status” were:

    Spouse/Partner
    Separated
    Divorced
    Single

75. The question about marital status offers spouse or partner as equivalent options. It stretches credibility to suggest that the applicant would have considered that the term ‘separated’ only applies to a marriage “pre-divorce” as was argued in submissions, quite apart from the fact that the applicant has not herself offered any such explanation.

76. I am entirely satisfied on a balance of probabilities that the applicant did use deception on her 2018 application. Applying the test in *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)* [2017] UKSC 67, in particular at para 62, I am satisfied that the applicant was dishonest in her 2018 application for settlement .

77. Accordingly, this application for judicial review is refused.

~~~~0~~~~
~~~~