



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

**Case No: UI-2022-006696**  
**UI-2022-006697**  
**First-tier Tribunal No:**  
**HU/53928/2021**  
**HU/53929/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 17 June 2024**

**Before**

**UPPER TRIBUNAL JUDGE L SMITH**  
**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MR SIMRAN RAI**  
**MR ROJAR RAI**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr S Karim, instructed by Bond Adams LLP Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard at Field House on 12 June 2024**

**DECISION AND REASONS**

Introduction

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Seelhoff promulgated on 13 October 2022.

Factual Background

2. The appellants are nationals of Nepal born on 01 January 1976 and 25 August 1984 respectively. The appellants are brothers and, on 14 January 2021, they made applications to join their mother, who was admitted to the UK as the widow of a Gurkha in December 2016. The ECO refused the applications on 17 April 2021 and 9 April 2021 under the adult dependant relative provisions of the Immigration Rules and under Article 8 of the ECHR outside the Rules.

### The decision of the First-tier Tribunal

3. The judge found that the appellants' earnings from work and subsistence farming are as claimed [27] and that the sponsor makes regular transfers to the appellants which the second appellant withdraws every month [25]. The judge found that the call records provided did not support the appeal, finding that very few of the calls were for longer than a few minutes [28-29]. The judge found that, contrary to the assertion in the witness statements, the call records submitted do not show any significant regular contact between the appellants and their mother at all [30].
4. The judge concluded at paragraph 32 that the documents show that the second appellant has control of the sponsor's bank account in Nepal. However, he found that it is not clear that there is any sort of emotional commitment or reciprocal feelings and support between the appellants and the sponsor. The judge found that the almost complete absence of evidence of contact cannot be reconciled with the assertions made on behalf of the appellants. Assessing the evidence in the round, the judge was not satisfied that there is genuine, effective and committed support that goes both ways between the appellants and their sponsor. The judge did not accept that Article 8 is engaged and dismissed the appeal.

### The appellants' grounds of appeal

5. It is contended in ground one that the judge erred in failing to consider relevant documentary evidence in the appeal. It is contended that the judge failed to have regard to the appellants' supplementary bundle of 15 pages which was uploaded on 6 October 2022 and contained 10 pages of call logs. It is contended that, given the judge's findings that there is almost a complete lack of contact, this error is material.
6. It is contended in ground two that the judge erred in his approach to family life under Article 8 in that he accepted that the sponsor financially supports the appellants but appeared to also require evidence of emotional support in order to demonstrate family life between adult family members within Kugathas v the Secretary of State for the Home Department [2003] EWCA Civ 31.
7. Permission to appeal was granted on the basis sought.
8. The respondent did not file a Rule 24 response.

### The error of law hearing

9. At the outset of the hearing, Mr Lindsay conceded that there is a material error in the First-tier Tribunal Judge's decision on the first ground only. He accepted that, through no fault on his part, the judge failed to take account of the appellants' supplementary bundle. Mr Lindsay pointed out that, although the appellants' supplementary bundle was uploaded onto the case management system on 6 October 2022, in advance of the hearing on 7 October 2022, it was uploaded only onto the second appellant's case and not that of the first appellant. He accepted that it is apparent that the judge worked from the first appellant's case in conducting and determining the appeals and that the respondent too appears to have failed to take the supplementary bundle into account. Mr Lindsay conceded that this evidence could have made a material difference to the outcome of the appeals.

10. Mr Karim made submissions in relation to ground two maintaining that the judge erred in finding that there is no family life under Article 8(1) and that the appeal should be allowed on the basis of the judge's findings as to financial support or that, in the alternative, the judge's findings on this matter should be preserved.

#### Decision on error of law

##### *Ground one*

11. We are satisfied that the concession as to ground one was properly made. It is apparent that the First-tier Tribunal Judge did not take account of the supplementary bundle comprising further bank statements and further evidence of call records. No reference is made to this bundle at paragraphs 15-17 of the decision where the judge set out the documents before the tribunal. We accept that this was because the supplementary bundle was uploaded only onto the second appellant's case.
12. Given the importance of the evidence as to contact in the judge's assessment of the emotional commitment and reciprocal feelings and support between the appellants and the sponsor, we are satisfied that this is a material error.

##### *Ground two*

13. At paragraph 27 of the grounds, it is asserted that the judge accepted that the financial support provided by the sponsor to the appellants meets the threshold in Kugathas v the Secretary of State for the Home Department [2003] EWCA Civ 31. Mr Karim submitted that the judge had found the appellants to be financially dependent on the sponsor albeit he conceded that the judge had not made an express finding to that effect. It is contended that the judge erred in assessing family life within Article 8(1) solely from the point of view that there must be both financial and emotional support.
14. In his submissions Mr Karim relied on the decision in Mobeen v SSHD [2021] EWCA Civ 886, in particular paragraph 46 which states:

“However, the case law establishes clearly that love and affection between family members are not of themselves sufficient. There has to be something more. Normal emotional ties will not usually be enough; further elements of emotional and/or financial dependency are necessary, albeit that there is no requirement to prove exceptional dependency. The formal relationship(s) between the relevant parties will be relevant, although ultimately it is the substance and not the form of the relationship(s) that matters. The existence of effective, real or committed support is an indicator of family life. Co-habitation is generally a strong pointer towards the existence of family life. The extent and nature of any support from other family members will be relevant, as will the existence of any relevant cultural or social traditions. Indeed, in a case where the focus is on the parent, the issue is the extent of the dependency of the older relative on the younger ones in the UK and whether or not that dependency creates something more than the normal emotional ties.”
15. Mr Karim submitted that the Court of Appeal indicates here that financial ‘and/or’ emotional dependency is sufficient, and that both are not required.

16. However, we do not agree with that interpretation of the judgement in Mobeen. We note paragraph 45 which summarises the position as follows:

“Whether or not family life exists is a fact-sensitive enquiry which requires a careful assessment of all the relevant facts in the round. Thus it is important not to be overly prescriptive as to what is required and comparison with the outcomes on the facts in different cases is unlikely to be of any material assistance.”

17. As set out in paragraph 46, the case law establishes that love and affection between family members are not of themselves sufficient, there has to be something more. Further, at paragraph 47 :

“The ultimate question has been described as being whether or not this is a case of "effective, real or committed support" (see *AU* at [40]) or whether there is "the real existence in practice of close personal ties" (see *Singh 1* at [20]).”

18. In our view it is clear from Mobeen, and the case law more generally, that what is required is an assessment of the evidence in the round with a view to deciding whether there is effective, real or committed support over and above the normal emotional ties between the family members.

19. In any event we do not accept Mr Karim’s submission that the judge made a finding that the appellants are financially dependant on the sponsor. The judge accepted the evidence that the sponsor provides financial support as claimed and he accepted that the sponsor pays her husband’s pension to the family members in Nepal which the second appellant withdraws monthly [25]. The judge noted that there was no challenge to the evidence that the sponsor’s pension was significantly more than the appellants and their siblings are able to earn in Nepal [27]. The judge clearly accepted the evidence as to financial support. However, there is no reference to evidence as to the overall financial position of the appellants, including income and outgoings. The judge’s conclusions fall short of a finding that the appellants are financially dependant upon the sponsor.

20. Further, the judge’s findings as to the financial support are very clearly made in the context of the significant finding that there is little evidence of contact between the appellants and the sponsor reflecting an absence of genuine, effective and committed support that goes both ways between them. The judge was not satisfied, based on this evidence, that even the normal emotional ties exist.

21. We conclude that ground two is not made out.

### **Conclusion**

22. We find that ground one is made out.

23. We considered Mr Karim’s submissions that the findings in paragraphs 25-27 should be preserved. However, we note that the judge made findings as to financial support on the basis of evidence which had not been challenged. As set out above, these findings do not go as far as establishing financial dependency. We further note that the appellants produced further bank statements in the supplementary bundle, and these require consideration. We take account too of Mr Lindsay’s submission that the Secretary of State may approach the conduct of

the appeal differently in light of the supplementary bundle. In these circumstances we do not consider it appropriate to preserve any findings of fact.

24. Accordingly, we set aside the decision of the First-tier Tribunal with no findings preserved.
25. As to disposal, we have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, we have considered what was said in Begum (remaking or remittal) [2023] UKUT 46 (IAC). Given that the decision on the appeal needs to be taken afresh, and given the nature of the error into which the First-tier Tribunal fell, we have concluded that the just and proper course is to remit the appeal to the First-tier Tribunal for rehearing.

### **Notice of Decision**

1. The decision of First-tier Tribunal Judge Seelhoff to dismiss the appeal is set aside with no findings preserved.
2. We remit the appeal for rehearing *de novo* before the First-tier Tribunal (Hatton Cross hearing Centre) with no findings preserved to be heard by a Judge other than Judge Seelhoff. A Nepalese interpreter will be required if the sponsor is to give evidence.

A Grimes

**Deputy Upper Tribunal Judge Grimes**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12 June 2024**