



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000342
UI-2023-000343

First-tier Tribunal Nos:
HU/58441/2021
HU/58442/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**KHIM MAYA PUN
DHAN KUMARI PUN
(NO ANONYMITY ORDER MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr. S. Jaisri, Counsel instructed by Sam Solicitors
For the Respondent: Mr. S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 8 February 2024

DECISION AND REASONS

1. In a decision promulgated on 17 November 2023 I set aside the decision of the First-tier Tribunal to be remade.
2. The sole issue, as agreed at the error of law hearing, was whether or not there was family life between the appellants and the sponsor for the purposes of Article 8. If there was family life for the purposes of Article 8, the appeals fell to be allowed.

The hearing

3. The sponsor and his wife attended the hearing. Unfortunately the appellants' representatives had not requested an interpreter. Mr. Walker stated that, given the evidence in the bundle, he would not have any questions for the sponsor. The representative from the appellants' solicitors, who is able to speak Nepali, explained to the sponsors how the hearing would proceed, and subsequently explained my decision.
4. I heard oral submissions from both representatives. I took into account the documents in the appellants' Upper Tribunal bundle (502 pages).
5. At the hearing I stated that I would be allowing the appeals. I set out my reasons below.

Remaking

6. I find that the appellants have shown that they have family life with the sponsor for the purposes of Article 8. Mr. Walker accepted that the documentary evidence clearly demonstrated continual family support for the appellants from the sponsor since he came to the United Kingdom in 2010. There was evidence of continuing financial support and evidence of contact, including visits by the sponsor and his wife to the appellants.
7. In considering whether the appellants and sponsor have a family life for the purposes of Article 8, I have taken into account the case of Rai [2017] EWCA 320, in particular [36] and [37]. This states that the "concept to which the decision-maker will generally need to pay attention is "support" - which means, as Sedley L.J. put it in Kugathas, "support" which is "real" or "committed" or "effective"". The Court of Appeal clarified that there was no need to show any exceptional or compelling circumstances above and beyond this dependence.
8. I have also taken into account the decision of Judge Farmer promulgated on 12 September 2019. This decision relates only to the first appellant. Following the case of Devaseelan, this decision must be my starting point. However, I find that over four years have passed since the decision of Judge Farmer, and there is new evidence before me which enables me to depart from that decision. I am mindful that her decision does not relate to the second appellant, and also that Mr. Walker accepted that there is evidence of continuous family support in respect of both appellants.
9. In Judge Farmer's decision she found at [26] that the first appellant continued to enjoy family life with the sponsor. I find that there has been no change in this situation since 2019. As accepted by Mr. Walker, family support has continued from the sponsor since this time.
10. I find that, prior to the sponsor moving to the United Kingdom, the appellants lived as a family unit with the sponsor and his wife in Nepal. I find that family life for the purposes of Article 8 existed between the appellants and sponsor prior to the sponsor leaving Nepal. I find that the appellants and sponsor lived together in the family home until 2010 when the sponsor and his wife came to the United Kingdom. I find that the appellants remained living in the family home until 2019. In 2015 the house was damaged in the earthquake but the appellants were able to remain living there. However in 2019, on the instructions of the sponsor, they moved from the family home as the damage from the earthquake

was making the property dangerous. The appellants provided a tenancy agreement dated 15 September 2019 (page 150).

11. I find that since 2019 the appellants have been living in rented accommodation paid for by the sponsor. I find that the sponsor and his wife stay in this rented property when they visit the appellants in Nepal.
12. I find that the sponsor supports the appellants financially. The appellants provided copies of money transfer receipts showing money transferred by the sponsor to the appellants (pages 173 to 224). It was accepted by Mr. Walker that there had been continuous financial support for the appellants from the sponsor since 2010.
13. In Judge Farmer's decision she found that the first appellant was financially dependent on the sponsor "to some extent". However, she found that the first appellant "could be financially independent" and "could find work". It is not clear what Judge Farmer meant by "to some extent", as she has not found that there is an additional source of financial support, only that the first appellant "could" be financially independent and "could" find work.
14. I find that the first appellant has remained financially dependent on the sponsor since he left Nepal in 2010. I find that the first appellant has not found work since Judge Farmer's decision. The appellants provided certificates from the Jaljala Rural Municipality Office confirming that they were unemployed (pages 148 and 149). The evidence of the sponsor and the appellants is that they have never been employed. The sponsor set out at [11] of his statement that the appellants were unemployed due to not having adequate qualifications or contacts. I accept the evidence that the appellants are unemployed and that their only source of income is from the sponsor. I find that the financial support provided by the sponsor to the appellants is real, effective and committed.
15. I find that the sponsor and his wife maintain contact with the appellants through visits and phone contact. I find that the sponsor and his wife visited the appellants in Nepal from November 2012 to January 2013, from November 2013 to February 2014, from February 2016 to April 2016, from April 2018 to May 2018, and from February 2022 to March 2022. I find that the sponsor and his wife have recently returned from a visit which lasted from 8 September 2023 to 8 December 2023. The sponsor provided copies of the stamps in his passport (pages 65, 66, and 126 to 140). The only significant gap is due to the travel restrictions in place during the pandemic. I find that these visits, which last between one and three months, are evidence of continuing emotional support and continuing family life.
16. The appellants provided evidence of phone cards and screenshots from Viber (pages 225 to 326). In his statement the sponsor said that he had not kept all of the evidence of communication but had started to keep it after being advised to do so by friends. I attach no weight to the fact that I do not have evidence going back over the entire time that the sponsor has been in the United Kingdom. I accept the evidence that the appellants and sponsor have maintained frequent contact over the phone since the sponsor left Nepal in 2010.
17. In his statement at [32] the sponsor said:

“When we speak to each other we talk about what we have gotten up to during the day, enquire about each other health each other. And express to each other how much we miss each other. Dhan, Khim and Lalbir also express to me that they feel lonely without me.”

18. The first appellant said at [18] of her statement:

“When we speak to each other we talk about our health, what we have gotten up to during the day. I, Khim and Lalbir always express our emotions to them. We always tell them that we are finding it difficult to live without them.”

19. I find that the evidence shows that the sponsor provides real, committed and effective emotional support to the appellants, and that the same support is provided by the sponsor’s wife. I find that the emotional support between the sponsor and appellants remains as it did when the appellants and sponsor were living as a family unit, with the only difference being that this support has to continue over the phone and through visits as the appellants and sponsor are separated.

20. Taking into account all of the evidence, I find that the appellants remain financially and emotionally dependent on the sponsor. I find that this support is real, committed and effective. I find that family life existed prior to the sponsor coming to the United Kingdom when the appellants were living with their parents in the family home. I find that this family life did not cease when the sponsor came to the United Kingdom. I find that the appellants have a family life with the sponsor and their mother sufficient to engage the operation of Article 8.

21. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being regular immigration decisions taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

22. Following the case of Ghising [2013] UKUT 00567 (IAC), having found that there is family life, I find that the decision would be a disproportionate breach of the appellants’ and sponsor’s rights under Article 8. In relation to the children of former Gurkha soldiers and the historic wrong, the case of Ghising states at headnote (4):

“Accordingly, where it is found that Article 8 is engaged and, but for the historic wrong, the Appellant would have been settled in the UK long ago, this will ordinarily determine the outcome of the Article 8 proportionality assessment in an Appellant’s favour, where the matters relied on by the Secretary of State/ entry clearance officer consist solely of the public interest in maintaining a firm immigration policy.”

23. I find that, had the sponsor been able to, he would have come to the United Kingdom when he was discharged from the army. This was in 1971. Accordingly, the appellants would have been born in the United Kingdom.

24. I have taken into account the factors set out in section 117B of the 2002 Act, insofar as they are relevant. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. However, I am mindful of Ghising, and find that there are no other factors in the appellants' case, such as criminality, on which the respondent relies. In relation to sections 117B(2) and 117B(3), the weight to be given to the English-language skills and financial independence of the appellants does not outweigh the weight to be given to the effect of the historic injustice. Sections 117B(4) to (6) are not relevant.

25. I find that the appellants have shown on the balance of probabilities that the decisions are a breach of their rights, and those of the sponsor and his wife, to a family life under Article 8.

Notice of Decision

26. The appeals are allowed on human rights grounds, Article 8.

**Kate
Chamberlain**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 February 2024