



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001965

First-tier Tribunal No: HU/54858/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Anaram Garbuja PUN
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms D Revill of Counsel instructed by Everest Law Solicitors.
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 9 April 2024

DECISION AND REASONS

Introduction & Background

1. This is an appeal against a decision of First Tier Tribunal Judge Parkes signed on 8 March 2023 dismissing on human rights grounds the Appellant's appeal against a refusal to grant entry clearance as the adult son of the widow of a former member of the Brigade of Gurkhas.
2. The Appellant is a citizen of Nepal born on 17 November 1971.
3. On 23 January 2022 he made an application to join his mother, Ms Chansuwa Pun (date of birth 1 December 1941) ('the Sponsor') in the UK. The application was refused on 4 July 2022. Amongst other things, the

Respondent was not satisfied that the Appellant was “*financially and emotionally dependent upon his mother beyond that normally expected between a parent and adult child*”.

4. The Appellant appealed to the IAC.
5. The appeal was dismissed for reasons set out in the decision of Judge Parkes. In short, Judge Parkes did not accept that family life existed between the Appellant and his mother within the meaning of Article 8(1).
6. The Appellant now challenges that decision with permission of Upper Tribunal Judge Lane, dated 22 October 2023. The grant of permission to appeal states:

“It is arguable that the Judge has failed to make findings of fact on matters of material importance to the issue of whether family life exists between the appellant and sponsor. The conclusion at [19] is arguably inadequately reasoned. All grounds may be argued.”

7. The Respondent has filed a Rule 24 response dated 26 January 2024 resisting the Appellant’s challenge to the decision of the First-tier Tribunal. It is to be noted that the Rule 24 response has been inadvertently drafted as a reply to the Grounds of Appeal submitted to the First-tier Tribunal in support of an application for permission to appeal, rather than the slightly different grounds submitted to the Upper Tribunal on renewal – and accordingly, to a limited extent, is misconceived. The relevant Grounds of Appeal of those dated 1 June 2023, and not those dated 19 March 2023.

Consideration of the ‘error of law’ challenge

8. The Grounds now relied upon, and amplified and articulated before me essentially raise two bases of challenge:
 - (i) The First-tier Tribunal Judge failed to direct himself to, and/or failed to apply, the appropriate test in respect of Article 8(1) of real or effective or committed support (per **Rai v ECO [2017] EWCA Civ 320**).
 - (ii) The First-tier Tribunal Judge had unduly focused on aspects of the past rather than properly exploring the present nature of the relationship between the Appellant and his mother.
9. In the premises, I note the following features of the case:
 - (i) The Appellant’s father was Jitman Pun: his date of birth is given as 1 January 1938; he died on 23 March 1995. He enlisted in the Brigade

of Gurkhas on 7 November 1955, and was discharged with the rank of Corporal on 11 September 1969 with exemplary military conduct. He married the Appellant's mother in 1961

(ii) The Appellant's mother was granted ILR on 28 April 2014; she then entered the UK on 20 June 2014. She receives a pension of NPR.36,000. Limited medical evidence was provided by way of documents from Nepal in respect of Gastritis and a thyroid problem. (There were no UK medical documents provided.)

(iii) The evidence shows that the Sponsor made visits to Nepal in 2015 (c.3 months), 2016 (c.6 weeks), from 6 December 2016 to 3 February 2018 (c.14 months), and twice in 2019 (c.2 months and c.3 months).

(iv) Although it was asserted in a covering letter statement "*The main purpose of these visits was to provide emotional support to my son*", the dates are such that the Appellant - who had spent significant periods working in the UAE - although present for most of the 2016 visit: was not in Nepal during the 2015 visit; was only present during the December 2016 - February 2018 visit up until 4 January 2017, and again from 5 January 2018 (i.e. for the first and last month); was only present for one month of the first 2019 visit; and was not present during the second 2019 visit.

(v) Of course, the coincidence of presence in the same country does not inevitably mean that a meeting took place; it was the Sponsor's evidence before the First-tier Tribunal that she had met the Appellant only once since he had gone to work in Dubai (Decision at paragraph 13).

(vi) In his visa application form (23 January 2022) the Appellant stated that he was "*living with siblings*" in Nepal [146]. The Appellant's appeal witness statement states the house in which he lives is owned by his brother (paragraph 1).

(vii) The Respondent's decision indicated that the decision-maker was not satisfied that the Appellant was "*financially and emotionally dependent upon his mother beyond that normally expected between a parent and adult child*".

10. Given the circumstances, the First-tier Tribunal Judge's observations at paragraph 16 - "*The Appellant has lived apart from his mother for many years and while he was working in Dubai they had little contact with each other and met only once... The evidence shows that the Appellant had established an independent life...*" - and at paragraph 17 - "*The time he spent working in Dubai undermines the Sponsor's claim of continued close family life between them*" - are entirely apposite, adequately reasoned, and entirely sustainable.

11. The Grounds do not directly challenge this assessment or fact-finding in so far as it relates to the period in which the Appellant was working in Dubai. Indeed, the Grounds accept that there was a period in which Article 8(1) could not be said to be engaged. The complaint is made that the Judge had *“wrongly concentrated upon the historical evidence of absence of such support and such family life”*, and had failed *“to make any adequate findings of fact pertaining to the current issue/depth of mutual support between them as at the date of the hearing”* (Grounds at paragraph 2d).
12. Contrary to paragraph 2c of the Grounds, I do not accept that the circumstance of there being a period – and indeed on the facts of this case a very substantial period including the period when the Sponsor relocated to the UK - where Article 8(1) was not engaged, *“is not relevant”* - although it is to be acknowledged that it is not conclusive as to the present existence of family life. It is relevant because it means that the evidence needs to demonstrate some sort of change such that family life has been re-established; moreover, and in any event, it is a relevant consideration in that it was incumbent upon the Judge to consider the entirety of the evidence and case as put to him.
13. The fact that such a conclusion in respect of the past was not determinative of the present circumstance was implicitly recognised by the First-tier Tribunal Judge at paragraph 18 in acknowledging the Appellant’s submission: *“It is suggested that the Appellant and Sponsor remain close and that dependency has been re-established between them”*.
14. The Judge addresses the substance of this submission succinctly across paragraphs 18 and 19:

“18. ... The Appellant is living with his siblings in Nepal and while he may be in regular contact with his mother his daily support will come from those nearest to him geographically. It is not clear why he has not returned to work in Dubai and whether he amassed savings when working there.

19. Taken overall I am not satisfied that given the Appellant’s age and personal history, including his working in Dubai for many years the limited contact with the Sponsor, that it can be said that family life exists between them. ...”
15. The Grounds at paragraphs 2e-h make a number of assertions as to supposed deficiencies in the Judge’s evaluation of the Appellant’s case: that there was no finding as to the financial support provided by the Sponsor; there was no finding as to the ownership of the property in which

the Appellant lived and whether he paid rent; there was no finding as to the Appellant's relationship status; there was no finding as to "*the frequency and depth and mutual benefit/value*" of the telephone contact between the Appellant and the Sponsor.

16. In my judgement these points not only have a flavour of attempting to reargue the Appellant's case, but are of no real substance in establishing an error of law. It is to be noted that there was no apparent supporting evidence of financial support from the Appellant to his mother after she moved the UK, and no support claimed from mother to Appellant whilst he was still working in Dubai. The evidence of current financial support before the First-tier Tribunal, by way of remittances and oral testimony, showed limited sums as identified at paragraph 14 of the Decision. It was not clear that this money was solely for the Appellant or being shared with his siblings. There was otherwise no real evidence as to the Appellant's financial circumstances - as the Judge noted it was not clear whether he had amassed savings. The Sponsor's evidence was that the Appellant was doing farm work (paragraph 11). As such the evidence did not demonstrate that such remittances provided 'real' or 'effective' support for the Appellant. The Judge was not required to make a specific finding as to the ownership of the Appellant's home: in any event, the evidence shows that it was owned by the Appellant's brother; as such, there is no absence of any finding that would assist the Appellant in establishing family life with the Sponsor; rather, insofar as it is implicit in this submission in the Grounds that the Sponsor was supporting the Appellant with accommodation or meeting the cost of accommodation, the case is undermined because the actuality is a dependency on his brother for accommodation. It is entirely unclear what the relevance of the Appellant's relationship status might be, and it is not apparent that anything of substance beyond not having established a different family unit with a partner and/or children, was articulated in support of his case in this regard before the First-tier Tribunal. No matter how frequent or valuable telephone contact might be between the Appellant and his mother, it is difficult to see that that remotely takes the case beyond the normal emotional ties that exist between geographically remote parents and their adult children - who might typically be expected to maintain contact by telephone: beyond assertion as to the value attached to such contact, there was no evidence before the First-tier Tribunal of any particular circumstance that took the value of such contact beyond the usual range that might be expected.
17. It is correct to note that the Judge does not make express reference to the test in **Rai**. I am also concerned, to the extent that it has caused me some hesitation in resolving the Appellant's challenge, to the somewhat confusing nature of the references under the sub-heading 'The Legal Framework' to the relevant principles in respect of Article 8. Paragraph 2 is clumsy. Paragraph 6 in referring to 'additional considerations' in Gurkha historic injustice cases potentially negates the fact that such cases are

substantially simplified in that the only real issue is whether or not Article 8(1) is engaged – if it is, then absent particular circumstances the answer to the proportionality test is obvious. In this context, the reference at paragraph 4 to the ‘balance sheet’ approach is essentially irrelevant.

18. However, on balance, I find that there is nothing identifiable in the Decision to indicate that the findings of the First-tier Tribunal Judge - which I uphold as sustainable and adequately reasoned – could have resulted in a different outcome in the appeal had the proper test been expressly identified in the body of the Decision. It was open to the Judge to conclude that the small occasional remittances did not provide sufficient evidence of family life. Both in this regard, and in respect of emotional ties, there was nothing to demonstrate that this was a case that went beyond the sort of ties that might be expected between a mother and son who had habitually lived apart for so many years. The reasoning, whilst succinct, is – just about – adequate.
19. The Appellant’s challenge fails accordingly.

Notice of Decision

20. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
21. The appeal remains dismissed.

I. Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

4 June 2024