



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005244/005245

First-tier Tribunal No:
HU/00861/00863/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1st of February 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

**Mr GAN SING GURUNG
Mr MIN BAHADUR GURUNG
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr West, Counsel instructed by Gurung & co solicitors
For the Respondent: Mr M Parvar, Senior home office presenting officer

Heard at Field House on 24 January 2024

DECISION AND REASONS

1. The appellants are brothers and are citizens of Nepal, and whose dates of birth are 5 October 1983 and 1 October 1972 respectively. They appeal against decisions dated 23 March 2023 and 28 March 2023 made by the respondent refusing their applications under for leave to enter the UK as adult dependent relatives of their mother, the widow of a former Gurkha soldier. The relevant rules are paragraph EC-DR 1.1 of App FM and Annex K IDI. The appeal was on human rights grounds.
2. In a decision dated 9 September 2023 the First-tier Tribunal (FTJ Cansick) (“the Judge”) dismissed the appeals. The main issue was whether or not family life was engaged under Article 8(1). The hearing proceeded by way of submissions only.

3. In grounds of appeal the appellants contended that the Judge erred in finding at [18-20] that there was insufficient evidence to establish family life and the Judge failed to take into account relevant evidence. (Kugathas v SSHD [2003] EWCA Civ 31).
4. Permission to appeal was granted by Judge Veloso who considered that it was arguable that the Judge failed to take into account all relevant factors and that family life can be resumed after a temporary rupture.
5. At the hearing before me Mr Parvar conceded that there was an error in law by the Judge who having found reliable evidence as to financial remittances and direct access to the sponsor's pension, contact and visits, thereafter failed to take into account the evidence as to the appellants return to live in the family home which was a resumption of family life and in the context of the fact that the first appellant was unmarried and the second appellant was divorced. Mr Parvar accepted that these factors were relevant to the assessment of family life as between adults and the issue of dependency.
6. Mr West made no submissions.

Discussion and decision

7. Having heard the submissions made by Mr Parvar and considered the decision and grounds of appeal, I am satisfied that there was a material error of law by the Judge. The Judge found that there was financial support, and emotional support by way of regular contact and visits. There was evidence that the appellants, although in their middle age, arguably resumed family life having returned to live in the family home rent free. The first appellant was unmarried and the second appellant was divorced and both directly received the sponsor's pension funds. The Judge failed to take into account such evidence which could amount to a resumption of family life notwithstanding that in the past there was evidence of independent living. The Judge's reasoning was flawed as to the marital status of both appellants.

Notice of Decision

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.
9. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Cansick.

G A Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30.1.2024