



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000514
FTT No: HU/54768/2023
LH/03154/2023
UI-2024-000515
FTT No: HU/54784/2023
LH/03155/2023
UI-2024-000516
FTT No: HU/54788/2023
LH/03156/2023
UI-2024-000517
FTT No: HU/54790/2023
LH/03158/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 30th May 2024**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Laldip Gurung
Timmuri Gurung
Dil Bahadur Gurung
Khamba Singh Gurung
(no anonymity order made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Moksud, Counsel instructed by IIAS
For the Respondent: Mr C. Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 20 May 2024

DECISION AND REASONS

1. The Appellants are nationals of Nepal, born respectively on the 5th September 1985, the 1st January 1983, 9th August 1974, and the 24th December 1976. They

each seek entry clearance on Article 8 grounds, asserting that they are the children of the late Mr Nar Bir Gurung, a Gurkha who served in the British Army. They state that they wish to join their stepmother Mrs Krishna Maya Gurung, who now resides in the United Kingdom. Their linked appeals were dismissed on the 19th September 2023 by First-tier Tribunal Judge Malcolm. They were granted permission to appeal by Upper Tribunal Judge Reeds on the 18th March 2024.

2. The First-tier Tribunal dismissed the appeals because it was not satisfied that there was a family life, for the purpose of Article 8, at stake here. Although it accepted that the four Appellants all still live in the family home, that they are in regular contact with Mrs Gurung, that she has visited them in Nepal and that she continues to support them all financially, the Tribunal was not satisfied that this amounted to the kind of real, effective and committed support necessary to find a family life between adult children and their parent: see for instance Kugathas [2003] EWCA Civ 31. Furthermore, for reasons I return to below, the Tribunal was not satisfied that the Third and Fourth Appellant are who they claim to be.
3. The Appellants' appeal centres on two issues.
4. The first is whether or not the third and fourth Appellants are in fact members of this family. The reason given for that doubt was that the names and dates of birth given on the application forms did not tally with the names and dates of birth that appear on the 'Kindred Roll' - the official Nepalese record of this family. On the Kindred Roll the names appear as Chandra Prasad, born on the 1st January 1975 (said to be the Third Appellant) and Kharka Prasad, born the 1st January 1977 (said to be the Fourth Appellant). Although the First-tier Tribunal accepted that these two people live in the family home with the First and Second Appellant, that they are in contact with Mrs Gurung, and that they are receiving financial support from her, the Tribunal could not be satisfied that they are in fact her stepchildren, that is to say the issue of the late Mr Nar Bir Gurung. The Tribunal was not satisfied that the obvious discrepancies between the names now provided and what is said on the Kindred Roll were not adequately explained. The Appellants submit that in reaching that finding the Tribunal has failed to have regard to documentary evidence produced by the Appellants going directly to this matter. In respect of both individuals, letters appear in the Appellants' bundle from Mr Dil Bahadur Tamang, the Ward Chairperson of their district, stating that the "varied name and age" given is in fact in relation to one person, ie that Dil Bahadur Gurung is one and the same as Chandra Prasad etc. Mr Moksud submitted that this letter, taken with Mrs Gurung's explanation that the discrepancy arises because of the use of family nicknames, was sufficient to establish the claimed relationship to Mr Nar Nir Gurung. For the Respondent Mr Bates accepts that the Tribunal does not appear to have taken this documentary evidence into account, and he accepts that this is an error.
5. The question remains whether that error is material. This brings me to the second area of dispute raised by the grounds.
6. Mr Moksud submits that in reaching its finding that Article 8 is not here engaged, the First-tier Tribunal has erred in two respects. He submits that on the facts as found, the Tribunal should have concluded that there was a family life. The Tribunal accepted that the Appellants were all in regular contact with Mrs Gurung, who continues to visit them in Nepal. They all still live in the family home. She sends them regular remittances. Having regard to the established principle that the threshold for engaging Article 8 is a relatively low one, and to

caselaw such as Kugathas [2003] EWCA Civ 31, Mr Moksud submits that the Tribunal should have found Article 8 to be engaged. Allied to this submission was another point. That is that at its paragraph 111 the Tribunal appears to consider that a dependency of necessity would need to be found in order for family life to exist between these adult Appellants and Mrs Gurung. Mr Moksud submits that this is quite wrong and that in so finding the Tribunal misdirected itself.

7. I accept Mr Moksud's proposition that the threshold for engaging Article 8 is relatively low, and that the application of the *Kugathas* principles has in many cases been unduly restrictive. I have kept that in mind. However, having carefully read the decision of the First-tier Tribunal I am unable to conclude that the positive findings he relies upon are incompatible with the Tribunal's ultimate conclusion that there is not here a family life for the purpose of Article 8. The fact that the Appellants continue to live in the family home, that they receive remittances from the Sponsor and that they keep in regular touch with her, and their UK based siblings, are obviously relevant factors. In another case these matters may well be enough to establish "real effective and committed support" of the sort envisaged in Kugathas. Here however there were other factors which militated against such a finding. Those were that the Appellants are all well into adulthood: the youngest is now 38, the eldest 52. Whilst they may receive money from Mrs Guring, they are in large measure supporting themselves by working land that they have inherited from their father. Two of the Appellants had worked abroad, and lived independent lives, for long periods of time. Importantly the evidence fell short of establishing that there was an emotional dependency between the Appellants and their stepmother beyond that which would normally be expected between adult children and parents. These are the reasons that the Tribunal could not be satisfied that a *Kugathas* dependency had been established. Reading the decision as a whole I am not satisfied that anything turns on paragraph 111. I certainly do not accept that these appeals were dismissed on the basis that this was not a dependency of necessity. The reasoning in that paragraph does no more than reflect the Tribunal's evaluation of the overall circumstances of the Appellants, which included the fact that they are all healthy adults who work together on the family land.
8. It follows that although the Tribunal did err in failing to take material evidence, viz the letters from the Ward Chairperson, into account, the error is not such that the decision should be set aside.

Decisions

9. The decision of the First-tier Tribunal is upheld and the appeals are dismissed.
10. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
20th May 2024