



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

**Case No: UI-2024-001794**  
**First-tier Tribunal No:**  
**HU/56477/2023**  
**LH/05397/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 08 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**NAIN KUMAR RAI**

**and**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Kashif of Bond Adams LLP Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 7 October 2024**

**DECISION AND REASONS**

1. The appellant is a citizen of Nepal born on 7 February 1986. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for entry clearance to the UK.
2. The appellant applied on 15 February 2023 for entry clearance to the UK as the adult dependent child of his mother, Tirtha Maya Rai, the sponsor, the widow of a former Gurkha soldier. The sponsor had come to the UK after being granted settlement as the widow of a Gurkha soldier on 24 August 2020, her husband having passed away on 13 October 2004.
3. The appellant's application was refused on 29 March 2023 on the grounds that he did not meet the eligibility requirements for adult dependent children of former Gurkhas as set out in the discretionary policy for Gurkhas discharged before 1 July 1997 and their family members, that he did not meet the requirements of paragraph

EC-DR.1.1. of Appendix FM of the immigration rules as a dependent relative, that there were no exceptional compassionate circumstances relating to his individual case to justify a grant of discretionary leave outside the immigration rules and that he had failed to demonstrate that he had an established family life with his mother over and above that between an adult child and parent such that Article 8 was engaged.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Traynor on 6 December 2023. The appellant was legally represented at the hearing and the sponsor attended to give oral evidence in support of the appeal. The sponsor confirmed that her youngest son had qualified for admission to the UK and was residing with her in the UK, that the appellant continued to reside in the family home in Nepal with her daughter and that she had four other children living in Nepal. She confirmed that she had been sending money to her children in Nepal since eight to nine months after arriving in the UK, which was shared amongst them and which, together with her widow's pension, met their medical, food and other costs. She confirmed that her children in Nepal did not work but they helped out relatives in exchange for food. She had returned to Nepal to visit her children on one occasion since coming to the UK.

5. Judge Traynor found there to be no evidence to show that the appellant was anything other than a fit and capable adult who was able to look after himself and work in order to support his daily living needs. He found there to be almost no evidence relating to the appellant's siblings who were said to reside in the family home and no evidence to suggest that the appellant and his siblings had a relationship with their mother that went beyond the normal relationship of adult siblings and a parent. He did not accept that the financial remittances made by the sponsor raised their relationship to one of family life for the purposes of Article 8(1) and he found that the appellant was leading an independent life which did not meet the dependency test identified in Rai v Entry Clearance Officer, New Delhi [2017] EWCA Civ 320. The judge found that Article 8 was not engaged and he dismissed the appeal in a decision promulgated on 15 January 2024.

6. The appellant sought permission to appeal against Judge Traynor's decision on the grounds that he had provided sufficient supporting evidence to demonstrate that he was financially and emotionally dependent on his sponsor; that, by considering necessity at the engagement stage, the judge had conflated Article 8.1 (engagement) with Article 8(2) proportionality; and that the judge had failed to take into account material evidence.

7. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on a renewed application, on the following basis:

"It is arguable that the First-tier Tribunal took irrelevant factors into account and/or misdirected itself in respect of its conclusion that there was not here a family life for the purpose of Article 8 because the Appellant had not established a dependency of necessity."

8. The respondent did not produce a rule 24 response.

### **Hearing and Submissions**

9. The matter came before me for a hearing. Both parties made submissions.

10. Mr Kashif submitted that the judge had taken account of irrelevant matters and had applied the wrong test and followed the wrong approach. On the basis that the relationship between the appellant and the sponsor was not disputed, that it was accepted that the sponsor provided the appellant with financial support and that there was no dispute that the appellant was still living in the family home, the test in Rai had been met and the judge ought to have allowed the appeal.

11. Ms Isherwood submitted that the judge had made no error of law and was entitled to make the findings that he did, given in particular the observation made as to the significant absence of relevant evidence. She submitted that the judge had looked at the appellant's circumstances in their entirety, including the fact that he lived with other siblings and the absence of evidence about their circumstances, and he had applied the relevant test and principles.

## **Analysis**

12. At [39] of Rai the Court of Appeal considered *"the real issue under article 8(1)... was whether, as a matter of fact, the appellant had demonstrated that he had a family life with his parents, which had existed at the time of their departure to settle in the United Kingdom and had endured beyond it, notwithstanding their having left Nepal when they did."*

13. It was Mr Kashif's submission that the appellant had met that test by reason simply of his relationship with the sponsor not being disputed, it being accepted that the sponsor provided him with financial support and the finding that he was still living in the family home, and that the judge ought to have allowed the appeal on that basis. However it seems to me that that submission ignores the question of the judge making his own evaluative judgment on the basis of the evidence before him, as reflected in the observation of the Court at [43], that *"Whether the appellant did enjoy family life at the relevant time was, of course, a question of fact for the Upper Tribunal. And this court will always accord appropriate respect to the evaluative judgment of an expert tribunal on the facts it finds"*.

14. As Ms Isherwood submitted, the judge clearly directed himself appropriately on the relevant caselaw and principles, he applied the test in Rai, he considered the appellant's circumstances as a whole on the basis of the evidence before him and he made relevant findings of fact on the basis of that evidence. Unlike the decision of the Tribunal in Rai, this was not a case of the judge applying an unduly elevated threshold for dependence and support and neither was it a case of the judge focussing unduly on the sponsor's decision to leave Nepal and settle in the UK without her children. On the contrary, the judge focussed on the relevant question, which was whether the relationship between the appellant and the sponsor amounted to family life for the purposes of Article 8(1), at the time the sponsor left Nepal and thereafter.

15. In so doing the judge considered the level of support provided by the sponsor, in terms of "real, effective and committed support" and whether the appellant had in fact begun an independent family life since his mother's departure. The judge observed that there was very limited information before him, both in regard to the appellant's own circumstances and in relation to the circumstances of his siblings. At [20] he considered the fact that the appellant continued to reside in the family household but he noted that there was no information about the circumstances of his other siblings who were said to reside in the same property, and no information of the level of support that they provided to him or to each other. At [22] and [24] the judge observed that the appellant was self-subsisting and worked in exchange for food,

albeit that his life was eased by the financial support from the sponsor, and that he had managed to subsist for a period of some months without his mother's support following her departure from Nepal. All of these matters were relevant considerations which the judge properly took into account when assessing whether there was a subsisting family life with his mother.

16. In the circumstances, whilst Mr Kashif may disagree with the judge's findings and conclusions, it cannot be said that the judge was not entitled to conclude as he did on the evidence available to him or that he made any material errors of law in reaching his decision. He self-directed himself appropriately, he applied the relevant legal principles and he assessed the evidence in the context of the relevant tests, focussing on the relevant issues. For all these reasons I find no error of law in the judge's decision and I uphold the decision.

### **Notice of Decision**

17. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Dated: 8 October  
2024