



**Upper Tribunal
Immigration and Asylum Chamber
OA/15440/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 17 October 2014**

**Promulgated:
On 22nd Oct
2014**

Before

Upper Tribunal Judge Kekić

Between

Anish Gurung

Appellant

and

**Entry Clearance Officer
New Delhi**

Respondent

Determination and Reasons

Representation

For the Appellant: Ms A Jaja, Counsel
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission to the Entry Clearance Officer on 3 September 2014 by First-tier Tribunal Judge Andrew in respect of the determination of First-tier Tribunal Judge Kamara which allowed the appeal following a hearing at Taylor House by way of a determination promulgated on 7 July 2014. For convenience, I continue to refer to the Entry Clearance Officer as the respondent and to the applicant as the appellant.
2. The applicant is a Nepalese national born on 7 September 1990. He challenges the decision of the respondent on 27 June 2013 to refuse to grant him entry clearance to join his father in the UK. His mother and sister's applications were successful. His was refused because he was over 18 and did not meet the requirements of the Immigration Rules. The ECO was also not satisfied that there were any factors which warranted a grant of leave outside the rules on Article 8 grounds.
3. Judge Kamara found that the rules did not fully consider the appellant's circumstances. She took the view that the appellant's father, an ex-Gurkha, had been prevented from applying for settlement in the UK following his discharge by an historic injustice and that had he been able to do so, he would have made an application and his son would either have been born in the UK or would have been a minor on arrival. The judge also considered that there was family life between the appellant and the rest of his family, that he had never lived independently, was unmarried, and was financially supported by his father. Relying on the weight to be given to the historic wrong as per Ghising (Gurkhas/BOCs: historic wrong: weight) UKUT 00567 (IAC), she allowed the appeal.
4. Permission to appeal was granted on the basis that the judge had failed to identify any compelling factors not identified by the rules, had not considered whether there was family life between the appellant and his father or whether had it not been for the historic injustice the appellant's father would have made an earlier application for settlement.
5. The appeal came before me on 17 October 2014. I heard submissions from the parties and at the conclusion of the hearing reserved my determination which I now give.

Findings and Reasons

6. I have considered the submissions made, the determination and the evidence I was referred to.
7. I note that the judge fully accepted the evidence of the sponsor. That included the assertion that he would have applied for

settlement after his discharge from military service on medical grounds but was prevented from doing so by the rules in force at the time. The written response from the appellant's representatives to the Secretary of State's grounds argues that the sponsor was unable to apply for settlement until 2004, at which time I note the appellant would have still been a minor. No explanation had been offered for why the sponsor waited until 2012/2013 to make his application for settlement. I queried this with Ms Jaja but she was helpfully able to clarify from the evidence that it was not until 2009 that he, as someone discharged before 1997 and with less than four years of service, would have been able to apply. Although there is no explanation for why he then waited even longer, the appellant was already over age in 2009. Having accepted the sponsor's evidence, the judge found that the historic injustice which prevented him from making an application for settlement after his military discharge was a compelling factor not covered by the rules. Contrary to what is argued in the grounds, therefore, she did in fact identify what led her to consider the appeal outside the rules and she did find that the sponsor would have made an earlier application if he had been able to.

8. It is also argued that the judge failed to make findings on whether there was family life between the appellant and his father. That is incorrect. As can be seen from the determination, the judge made a clear finding, for reasons which Mr Walker did not seek to challenge, that there was family life between them, having full regard to the appellant's majority and circumstances. That being the case, this ground falls away.
9. For these reasons, I am satisfied that the judge gave clear reasons for her decision and properly followed the law and the jurisprudence. It may be that another judge would have reached a different decision but that is not the test here. The grounds fail to establish that an error of law was made. The entry clearance officer's challenge fails and the decision of the judge is upheld.

Decision

10. The First-tier Tribunal did not make an error of law. The decision to allow the appeal under article 8 is upheld. The appeal is dismissed under the Immigration Rules.

Anonymity

11. The First-tier Tribunal did not make an anonymity order and no request for one was made to me.

Signed:

Dr R Kekić
Judge of the Upper Tribunal
20 October 2014