



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/11622/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 21 May 2015**

**Decision and Reasons
Promulgated
On 19 June 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr SAHILL ALIAS DIPESH RAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Howells, Counsel instructed by N C Brothers & Co
For the Respondent: Ms E Savage, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge PJM Hollingworth on 13 February 2015 against the determination of First-tier Tribunal Judge Froom who had dismissed the Appellant's appeal against the refusal of his entry clearance application made on 5 December 2012 under Appendix FM as a dependant relative and on human rights grounds (Article 8 ECHR family life) in a determination promulgated on 22 September 2014.

2. The Appellant is a national of Nepal, born on 10 March 1989. The Appellant's father had served in the British Army (Brigade of Gurkhas) and had settled in the United Kingdom in January 2011, where he had been joined by his wife in May 2014. It was conceded on the Appellant's behalf that he did not meet Appendix FM of the Immigration Rules. The appeal was pursued on Article 8 ECHR family life grounds only. The judge found as a fact that there was no family life between the Appellant and his sponsor and that Article 8 ECHR was not engaged, but that if he were wrong, in the alternative the Appellant's exclusion was proportionate.
3. Permission to appeal was granted because it was considered that it was arguable that the judge had erred in his factual finding by considering the "historic injustice" issue only at the stage of proportionality.
4. Standard directions were made by the tribunal, indicating that the appeal would be redecided immediately if a material error of law were found. A rule 24 notice had been filed on the Respondent's behalf, opposing the onwards appeal.

Submissions

5. Mr Howells for the Appellant relied on his skeleton argument, the grounds of onwards appeal and the grant of permission to appeal. In summary he contended that the judge's findings as to family life as set out at [18] of the determination were perverse. The findings were inconsistent with the findings reached at [15] and [16], and could not stand. Although the judge had referred to the correct case law at [13], he had not examined the full picture. The fact that the Appellant had lived apart from his parents was not an indication of the lack of family life but rather was a consequence of the "historic wrong" which the judge had failed to factor into his assessment of the evidence. Although the judge had considered the "historic wrong" later in his determination, that was conflation of the issues and was the wrong approach. The determination should be set aside and the decision remade in the Appellant's favour.
6. Ms Savage for the Respondent relied on the rule 24 notice. The judge had taken a proper approach. The Appellant was simply seeking to attack the judge's findings of fact which had been open to him on the evidence. There was no error of fact. NL and SL (Nepal) [2013] EWCA Civ 8 was relevant. The determination should stand.
7. In reply, Mr Howells contended that NL and SL (above) was not relevant and could not save the determination.
8. The tribunal indicated at the conclusion of submissions that it found no error of law and reserved its determination, which now follows.

No material error of law finding

9. In the tribunal's view the grant of permission to appeal was generous. The grounds of onwards appeal were an attempt, as so often seen in the Immigration and Asylum Chamber, to dress up a difference of opinion or a disagreement with a First-tier Tribunal Judge's proper findings as an error of law.
10. Ms Savage was correct to draw attention to NL and SL (above) where the Court of Appeal considered the lawfulness of refusal of entry clearance to the dependant adult children of Gurkha Brigade veterans now settled in the United Kingdom. The findings of the First-tier Tribunal in NL and SL that there was no emotional dependence for Article 8 ECHR purposes was upheld in turn by the Upper Tribunal and the Court of Appeal; see [50]: "In our view, the FTT was entitled to conclude that, although the usual emotional bonds between parents and their children were present, the requisite degree of emotional dependence was absent."
11. Mr Howells's assertion that the First-tier Tribunal determination was "perverse" was extravagant and unjustified. He identified no misapprehension of any fact by the judge, nor any error in the extensive and relevant case law accurately cited: see [10] onwards of the determination. The judge discussed the evidence with obvious care, and explained the conclusions he drew about family life as at the date of the Entry Clearance Officer's decision, the material date, clearly and in detail at [18]. There was no conflict with his earlier findings which were a summary of effectively undisputed facts, including the Appellant's financial dependency. The judge was alert to the "historic wrong" argument which he described as "an extremely important consideration" and which the judge addressed fully in the alternative at [20] to [23] of the determination. Thus the judge dealt with all of the arguments placed before him on the Appellant's behalf. It is little short of absurd to suggest that the approach he adopted was mistaken, and that he was not alert to the "historic wrong" issue at all stages of the hearing and the decision making process.
12. The findings which the judge reached as to the non existence of family life in Article 8 ECHR terms as the date of the Entry Clearance Officer's decision were logical. The judge applied on the case law he had cited when stating that "The longer a person lives apart from the rest of the family it must usually be the case that 'family life' in the sense of emotional dependency tapers off." The inferences which the judge drew from the facts of long separation and demonstrable personal independence were open to him. The arguments advanced to the tribunal to the contrary are at best a disagreement with the judge's findings.

13. The tribunal finds that there was no error of law in the full and careful determination and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell