



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/06724/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 October 2017**

**Decision & Reasons  
Promulgated**

**On 08 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ENTRY CLEARANCE OFFICER - NEW DELHI**

Appellant

**and**

**RIM PRASAD ROKA PUN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr M Puar, Counsel instructed by N C Brothers & Co  
Solicitors

**DECISION AND REASONS**

1. The Entry Clearance Officer appeals with permission against the decision of First-tier Tribunal Judge Farmer promulgated on 26 January 2017 in which he allowed the appeal of Mr Rim Prasad Roka Pun against a decision of the Entry Clearance Officer to refuse entry clearance and this case comes by way of a refusal of a human rights claim.
2. In short it is not in dispute that Mr Pun who, for the sake of ease and for no other reason I refer to as "the appellant", is the child of a former Ghurkha

and who applied for entry clearance to the United Kingdom on that basis. That is set out in significant detail in the decision of Judge Farmer and there is no need to repeat that.

3. The judge found that there did, despite the degree of separation between the appellant and his family and his age that there did unusually exist a family life in this case, having directed himself in respect of Kugathas [2003] EWCA Civ 31 at paragraph 19 and having considered this decision in more detail at paragraphs 21 to 23 of his decision. The judge found in analysing the Article 8 case that a family life did exist and that the decision was in the light of historic injustice identified in Gurung [2013] EWCA Civ 8 that the interference with the family life which in this case was disproportionate.
4. The Entry Clearance Officer sought permission to appeal on two grounds: first, that the Tribunal had materially misdirected itself in law in failing properly to address the test set out Kugathas; and second, that the judge failed to give adequate reasons for making findings with respect to the public interest and had disregarded entirely Section 117B of the 2002 Act. Permission to appeal was given by Judge P J M Hollingworth on 16 August 2017.
5. I heard brief submissions from both representatives. Mr Bramble quite candidly accepted that he may be in some difficulty with regards to the first ground, given that although the judge does at paragraph 19 direct himself in terms of Kugathas, it is clear that the issue of family life was dealt with at paragraphs 21 to 23 and I am satisfied, having had regard to what the judge has said in paragraphs 21 to 23, that although there is no express detailed reference to the decision in Kugathas, the principles have properly been applied and it could not be said that the judge's decision on this matter was perverse or irrational and accordingly I do not find that ground 1 is made out.
6. Second, turning to the issue of the failure properly to deal with Section 117B of the 2002 Act, Mr Bramble submitted that it was the Entry Clearance Officer's case that Section 117B had not properly been dealt with in that there was a failure properly to deal with the issue of the English language, in particular, and also whether there would be recourse to public funds. He submitted, although with some degree of reluctance, that this could outweigh the historic injustice point drawn attention to by the Court of Appeal in Gurung.
7. Mr Puar for the appellant submitted on the basis of Rai [2017] EWCA Civ 320 that the Court of Appeal had made it clear that notwithstanding the introduction of Section 117B it could not be said that the historic injustice was outweighed by those factors, given not least a number of policy matters which he submitted were still relevant; and, that it has never been a requirement of the policy or otherwise that people in the position of the appellant are required to speak English there being no recourse to public funds.

8. In the circumstances, and bearing in mind the decisions both in Gurung and Rai are considered, although the judge did not deal with Section 117B in any great detail, it is nonetheless sufficiently clear that the directions served with this was relevant and I consider that it might have been the case law already referred to that the decision is adequate and it cannot be argued as the Entry Clearance Officer sought to do that there had been an entire disregarding of the interests set out in Section 117B.
9. Accordingly, in the circumstances the case is adequately reasoned and ground 2 is not made out.
10. For these reasons, I am satisfied that none of the grounds of appeal are made out.

### **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2. No anonymity direction is made.

Signed

Date: 6 November 2017



Upper Tribunal Judge Rintoul