



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09916/2016**

Appeal Numbers:

HU/09920/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 12 October 2017**

On 6 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**(1) MR DEBINDRA RAI
(2) MR RAM CHANDRA RAI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Layne, Counsel instructed by Everest Law Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State from the decision of First-tier Tribunal Judge O'Malley promulgated on 17 July 2017. The matter relates to a decision of the Entry Clearance Officer regarding the first and second appellants who are siblings and the children of a previously serving officer in the Gurkha army.
2. The grounds settled on behalf of the Secretary of State make two substantive criticisms of the First-tier Tribunal Judge. The first is the paucity of factual findings and insufficiency of reason; and the second is

the lack of rigour in the consideration of public interest considerations under Section 117B of the Nationality, Immigration and Asylum Act 2002.

3. Mr Tarlow, on behalf of the Secretary of State, took me to what he says is an absence of positive findings in relation to the nature and extent of any substantive family life between the parents and their adult children. He submits that the section 117B assessment was coloured by too strong a regard for the historic injustice meted out to Gurkha servicemen and their families, exemplified in decisions such as **Ghising & Others [2013] UKUT 567**. This is not the fullest of decisions and it is one which might have been improved by additional text on some or all of the issues identified by Mr Tarlow.
4. Against this, Mr Layne who acts for the respondents to the appeal, has taken me through the decision in some detail making express reference to findings at paragraph 38 dealing with money transfers supporting the appellants in Nepal and what the judge describes as “emotional dependence”, evidenced by at least monthly contact with the children. Mr Layne conceded that the term contact used in this context by the Judge referred not to physical meetings but indirect contact whether by telephone, Skype or other means. Mr Layne took me further to paragraphs 55, 56 and 57 dealing with other material findings.
5. What I need to be satisfied about is whether the decision discloses a material error of law. The fact that a decision might be capable of improvement is not of itself a ground for setting it aside. In this case, although the conclusions were briefly expressed, the Judge did fully take into account all evidence and all material that was before the tribunal. Her conclusions as to the existence of a family life cannot be categorised as irrational because her reasons are clearly – though succinctly – stated. The fact that the Secretary of State might disagree with those findings is not a ground for appeal.
6. Equally, in looking at the decision holistically, all the relevant features under section 117B were considered by the Judge. Paragraphs 55 and following are short and concise, but the Judge’s reasoning is clear in that she places into the scales those factors which militate in favour of the appellants (as they were) and those countervailing factors which militate in favour of the public interest.
7. It is possible that a different judge on a different day might have reached a different conclusion but I am not satisfied that there is a material error of law enabling me to set aside the decision.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date

11 October 2017

Deputy Upper Tribunal Judge Hill QC