



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01148/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2018

Decision and Reasons Promulgated
On 22 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I.A. M. MURRAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS PURNA KUMAR RAI
(Anonymity has not been directed)

Respondent

Representation:

For the Appellant: Mr Wilding, Home Office Presenting Officer

For the Respondent: Mr Wilford, Counsel for Everest Law Solicitors, Ealing, London

DECISION AND REASONS

1. The appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-Tier Tribunal.
2. The appellant is a citizen of Nepal born on 1 January 1988. He appealed the respondent's decision of 12 December 2016 refusing him entry clearance to settle in the United Kingdom as the adult dependent child of her mother Phool Kumari Rai, widow of the appellant's late father who was an ex-Gurkha soldier. His appeal was heard by

Judge of the First-Tier Tribunal Malone on 19 October 2017 and was allowed on human rights grounds in a decision promulgated on 7 November 2017.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Lambert on 16 April 2018. The permission states that it is arguable that the Judge failed to take into account the respondent's records as to family life as at 2011. There is no reference to these records in the decision and there is no reasoning relating to these records. The permission goes on however to state that it is not clear if the internal records of the Entry Clearance Officer were placed before the Judge. The permission goes on to state that the Judge's findings as to dependence appear to be limited to the short content of paragraph 42 of the decision and there is very limited reasoning in this paragraph and none at all in the two paragraphs that follow. The permission states that this is an arguable error of law.
4. There is a Rule 24 response on file which states that the respondent did not rely on the internal records and they were not produced until the application for appeal to the Upper Tribunal was made and they were not placed before the First-tier Tribunal. Judge Malone therefore cannot have erred in failing to take them into account.
5. The response refers to *Kugathas* [2003] EWCA Civ 31 which deals with the definition of dependency and the word 'support'. This case states that family life is not established between an adult child and his surviving parent unless something more exists than normal emotional ties. Such ties might exist if an appellant is dependent on a family member and it states that it is not essential that the members of the family should be in the same country. The case of *Ghising* [2013] UKUT 00567 (IAC) is referred to, relating to Family Life, Adults and Gurkha Policy. This found that *Kugathas* was interpreted too restrictively and that family life between adult children and parents can easily be found without evidence of exceptional dependence. The response states that it is significant whether the adult child (being the appellant) has founded a family of his own. The case of *Gurung* [2013] EWCA Civ 8 was also referred to and this states that in some instances an adult child may establish that he has a family life with his parents or parent. It depends on the facts. The response refers to the First-Tier Judge in this case finding that something more than love and affection existed between the appellant and his sponsor. He notes that the sponsor pays for the appellant's accommodation and has visited twice since she came to the United Kingdom. The Judge also states that he is satisfied that the appellant has been and still is totally financially dependent on remittances from his mother, and that she has always provided him with real, effective and committed support and continues to do. Reference is then made to the historical injustice relating to Gurkhas.

The Hearing

6. The issues in this case are whether there is family life between the appellant and her mother and whether Article 8 is engaged.
7. It was accepted that the internal records of the respondent were not before the First-Tier Tribunal Judge.

8. The Presenting Officer submitted that there is a narrow point in this claim and that is whether the Judge has properly considered whether Article 8 is engaged in this case. He submitted that the Judge refers to the case law relating to an adult child having emotional ties with a parent. The Judge refers to this case law and focusses on the weight to be given to the historical injustice but the Presenting Officer submitted that what is relevant is whether Article 8 is engaged and if it is, proportionality has to be considered.
9. The Presenting Officer referred me to paragraphs 40 and 41 of the decision and the Judge's statement that the appellant's mother's decision to move to the United Kingdom to take up settlement did not terminate any family life that existed before her departure.
10. The Presenting Officer submitted that the question is whether the relationship between the appellant and his sponsor go beyond the norm of emotional ties and he referred me to paragraph 42 of the decision and submitted that the closest that the Judge gets to this is the appellant's mother making remittances to the appellant. The Judge then reaches his ultimate finding which is that the appellant is totally financially dependent on his mother. The Judge states that the sponsor pays for the appellant's accommodation and at paragraph 44 states that his mother has always provided him with real, effective and committed support. She continues to do so. The Presenting Officer submitted that the Judge's findings on this are inadequate. It has not been shown that the appellant and his mother have any emotional ties beyond the norm and so there is a material error of law in the Judge's decision.
11. The Presenting Officer submitted that the fact-finding in this case is inadequate and that the case should be remitted the First-Tier Tribunal and that further fact-finding is required.
12. Counsel submitted that there is a sufficiency of reasoning in the decision and only brief explanations of the conclusions reached are required and these are there.
13. Counsel submitted that lengthy reasons are not required and that the Judge refers to the said case of Kugathas at paragraph 34 and the said case of Ghising and he does not apply the case of Kugathas too rigidly. The Judge finds that the sponsor in this case gives real, effective and committed support to the appellant.
14. Counsel referred to paragraphs 40 to 45 of the decision and submitted that these paragraphs make clear what evidence the Judge draws his conclusion from. At paragraph 40 he refers to the sponsor's visits to the appellant and for the respondent's argument to succeed it would have to be found that the sponsor does not give committed support to the appellant which she clearly does. He submitted that there is nothing from the respondent to indicate that the Judge's findings were perverse and he submitted that there is no material error of law in the Judge's decision.

15. I was asked to consider the record of proceedings from the First-Tier Hearing and note that the sponsor was not called to give evidence as her evidence was not challenged by the respondent.

Decision and Reasons

16. This application hinges on one specific point and that is whether there is family life between the appellant and her mother and if there is, the claim is likely to succeed.
17. In the case of Singh [2015] EWCA Civ 630 it is stated that a child enjoying family life with his parents does not suddenly cease to have family life at midnight as he turns 18 years of age. The Judge also accepts that the historic injustice represents an exception to the normal approach to immigration control and that a compelling case is not required or if it is required it is provided by the historic injustice itself. In historic injustice cases the interest of immigration control does not outweigh Article 8 rights. In the case of Gurung it is stated that the dependent child of a Gurkha settled in the United Kingdom has such a strong claim as to have his Article 8 rights vindicated notwithstanding the potency of the countervailing public interest in maintaining a firm immigration policy. The appellant's father died in 1994 and his mother came to the United Kingdom in 2011. At that time the appellant was 24 and so could not come with his mother as a dependant. The case of Ghising & Others states that the weight to be given to the historic injustice will normally require a decision in the appellant's favour and the Judge has taken all of this into account when reaching his decision.
18. The Judge makes findings on family life referring to the sponsor's visits to the appellant in Nepal and at paragraph 41 he states that the appellant's mother's decision to move to the United Kingdom to take up settlement did not terminate the family life that existed before her departure. The Judge then refers to the remittances made by the appellant's mother to the appellant and at paragraph 42 he finds that the appellant has been and still is totally financially dependent on the remittances from his mother, and that his mother pays for the appellant's accommodation.
19. At paragraph 44 the Judge states that he is satisfied that the appellant's mother continued to enjoy family life with the appellant after she settled in the United Kingdom and was doing so at the date of the decision. Proper explanations are given for all these findings and at paragraph 45 the Judge states that the Entry Clearance Officer's decision interferes with the appellant's family life with his mother and that the respondent is relying solely on the interests of immigration control in refusing the application. Based on the case of Gurung the appellant has a strong claim to settlement. He states that there are no countervailing considerations that could assist the respondent in justly refusing the appellant's application only the necessity for effective immigration control.
20. I find that the Judge's decision is clear and I find that there is no material error of law in the Judge's decision. He finds that there is family life between the appellant and the

sponsor and has given reasons for this and he has carried out a proportionality exercise, taking into account the historic injustice and effective immigration control.

Notice of Decision

I find that there is no material error of law in the Judge's decision and that his decision promulgated on 7 November 2017 must stand.

Anonymity has not been directed.

Signed

Date 13 August 2018

Deputy Upper Tribunal Judge Murray