



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/01508/2015
HU/01512/2015

THE IMMIGRATION ACTS

Heard at: Field House
On: 14 March 2018

Decision and Reasons Promulgated
On: 9 April 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MR CHAKRA PAHADUR THAPA
MR DEEPAK THAPA
(ANONYMITY DIRECTIONS NOT MADE)

Respondents

Representation:

For the Respondents: Ms N Nnamani, counsel (instructed by Howe & Co)
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I shall refer to the appellant as the entry clearance officer and to the respondents as the claimants. The claimants are brothers and are nationals of Nepal, born on 27 December 1985 and 2 January 1987 respectively.
2. The entry clearance officer appeals with permission against the decision of First-tier Tribunal Judge I. M. Scott, promulgated on 31 May 2017. He allowed their appeals under Article 8, against the decision of the entry clearance officer refusing their

applications for entry clearance to come to the UK for settlement as adult dependent relatives of an ex-Ghurkha soldier.

3. In the entry clearance officer's grounds it was contended that the limited evidence did not demonstrate emotional dependence '...to the Kugathas standard'. Although the entry clearance officer did not dispute that family life exists between the claimants and their sponsor, they did not show elements of dependency beyond the normal emotional ties between adults.
4. It was also contended that the Judge speculated when finding that if it were not for the historical injustice of Gurkha settlement policy, the claimants would have been able to come to the UK much sooner, despite there being no assertion by their mother that this was their father's intention.
5. Mr Bramble, on behalf of the entry clearance officer, accepted that contrary to the assertions in the grounds, the Judge did in fact consider Kugathas [2003] EWCA Civ 31 at [28].
6. Moreover, he found on the evidence, that there is dependence beyond normal emotional ties to be expected between a mother and adult sons. This was particularly strong following the death of the claimants' father, with very frequent contact being maintained, especially as the claimants are unmarried and have not established independent lives.
7. Mr Bramble also accepted that the public interest considerations set out in s.117B of the 2002 Act were properly considered.
8. There had been no relevant policy until relatively recently. The sponsor had been required to make a decision between taking up the opportunity to settle in the UK which had long been denied unjustly and losing the right after two years under the relevant Immigration (Leave to Enter and Remain) Order 2000 and paragraph 20 of the Immigration Rules. The claimants' father only applied in 2004. Different Rules were applicable.
9. Ms Nnamani submitted that the Judge had properly directed himself in the circumstances. The appeal should be dismissed.

Assessment

10. I find that Mr Bramble has very properly and fairly accepted that contrary to the grounds of appeal, the Judge had found that there was relevant emotional dependence in accordance with Kugathas.
11. Further, he accepted that the Judge had regard to the evidence that at the time of their father's discharge from the army, there was no settlement policy for British Ghurkhas and dependent families. If the opportunity had arisen they would have applied for settlement at that time. The Judge noted that it was always his dream to go to the UK and live there with his family. They had discussed the possibility in the past and always said they would do so if they were able.
12. The Judge also had proper regard to the sponsor's responsibility for maintaining and supporting the claimants. There was also regular contact with them. The family

ties were very strong. They speak to each other very regularly. She has been back to Nepal four times to see them.

13. He also had regard to the earlier decision by the First-tier Tribunal Judge dated 3 June 2013 dismissing their claims against the refusal of their application made under paragraph 317 of the Immigration Rules.
14. Mr Bramble accepted that in the circumstances the Judge had made no material error of law.
15. In the circumstances I find that the decision of the First-tier Tribunal did not involve the making of any error of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed

Date 4 April 2018

Deputy Upper Tribunal Judge C R Mailer