



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03991/2016

THE IMMIGRATION ACTS

Heard at Field House
On 8 June 2018

Decision & Reasons Promulgated
On 30 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SWIKAR GURUNG
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms S Kiss, Home Office Presenting Officer.
For the Respondent: Mr Bhattraai, Legal Representative.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of State referred to as “the Respondent” and Mr Gurung as “the Appellant”.
2. The Appellant is a citizen of Nepal who made application for entry clearance to settle in the United Kingdom as the dependant son of Bal Krishna Gurung, former Ghurkha soldier. The application was refused and he appealed and following hearing at Birmingham, and in a decision promulgated on 7 September 2017, Judge of the First-tier Tribunal Asjad allowed the Appellant’s appeal. The Respondent sought

permission to appeal which was granted on 23 March 2018 by Judge of the First-tier Judge Manuell. His reasons for so granting were: -

“1. First-tier Tribunal Judge Asjad allowed dismissed (sic) the Appellant’s appeal brought against the refusal by the Entry Clearance Officer of his application for leave to settled (sic) in the United Kingdom as the adult dependant relative of a former Gurkha. The decision and reasons was promulgated on 7 September 2017.

2. The Respondent’s onwards grounds dated 6 October 2017 were in time. The grounds in the summary submit that the decision to allow the appeal is characterised by an absence of reasoning: it is not possible to see why the appeal was allowed.

3. The grounds are arguable. The Appellant was already 27 by the date of the Article 8 ECHR hearing (the only permissible ground of appeal). The evidence of emotional dependency was not investigated with any rigour. Nothing in the witness statements filed was identified to support the conclusions reached. Financial dependency is another matter but any relevant connection was not identified.”

3. Thus, the appeal came before me today.
4. Ms Kiss relied upon the grounds seeking permission to appeal which she duly amplified. She asked me to note that there was no Presenting Officer in the First-tier Tribunal and that at the time of the Entry Clearance Officer’s decision there was no evidence of financial support. The Judge, in coming to conclusions in relation to family life and that the relationship between the Sponsor and the Appellant go beyond normal emotional ties between parents and adult children relied too heavily on the money transfers from the United Kingdom. Albeit that the Judge took account of the authority of **Rai v Entry Clearance Officer, New Dehli [2017] EWCA Civ 320** she has failed to recognise that each appeal turns upon the specific facts of individual cases.
5. It was further asserted that the Judge has failed to give any indication, outside of money being transferred, why family life is engaged and that in any event there is an absence of reasoning.
6. Mr Bhatteari, submitted that the financial circumstances of the Appellant were to be found at paragraph 13 of the Judge’s decision where she accepted the evidence of the Sponsor that he had been financially supporting the Appellant since he left Nepal. Evidence of money transfers was given and there were letters confirming this to be the case. The Judge found the Sponsor to be a credible witness and that there was financial dependency and family life between them over and above the normal emotional ties that exist. The Judge concluded that a period of separation between the Appellant and his Sponsor had not “split the family unit in this case”. Further this was an appeal where the Judge was entitled to conclude, having accepted the credibility of the Sponsor, that the Sponsor had been allowed to settle upon discharge from the army but there had been an historic wrong as his son, were he to have been born in the United Kingdom would be a British citizen. Mr Bhatteari referred me to paragraph 22

of the Judge's decision where, following authority, she concluded that this historic injustice was normally sufficient to outweigh the public interest in maintaining immigration control. This was a case where there were no countervailing factors identified in the refusal decision.

7. The Respondent cannot complain when a decision goes against him by reason of there being no Home Office Presenting Officer in the First-tier Tribunal. The Judge was entitled to proceed. This was an appeal where the Respondent chose not to be represented. The Judge came to conclusions that were open to be made on the evidence taking into account that material filed by the Appellant. She also took into account oral evidence and in particular the credible evidence of the Appellant's Sponsor. The Judge has dealt with the appeal on its own facts and come to a conclusion that was open to be made. She has adequately reasoned her decision which contains no material error of law.

Decision

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

I do not set aside the decision but order that it shall stand.

No anonymity direction is made.

Signed

Date 23 July 2018.

Deputy Upper Tribunal Judge Appleyard