



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: HU/04266/2016

THE IMMIGRATION ACTS

Heard at: Field House  
On: 14 June 2018

Decision and Reasons Promulgated  
On: 25 June 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR SANTO BAHADUR PUN  
ANONYMITY DIRECTION NOT MADE

Appellant

and

ENTRY CLEARANCE OFFICER: NEW DELHI

Respondent

Representation

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

DECISION AND REASONS

1. The appellant is a national of Nepal, born on 25 July 1986. He appeals with permission against the decision of First-tier Tribunal Judge Courtney who, in a decision promulgated on 20 July 2017. She dismissed his appeal against the respondent's decision to refuse his application for entry clearance to the UK as the dependent relative of his father, Mr Em Bahdur Pun, who was granted indefinite

leave to remain on 5 August 2009 on the basis of his service with the Brigade of Gurkhas. He and his wife moved to the UK on 17 September 2011.

2. She noted that the appellant was not relying on Annex K to the Immigration Directorate Instructions but rather on Article 8 of the Human Rights Convention [11].
3. She found that the appellant could not succeed on Article 8 grounds. He did not enjoy family life with his parents. The question of historic injustice did not arise with regard to a discussion of proportionality as the appellant had not discharged the burden of proving that Article 8 is engaged – 25.
4. In granting permission to appeal, First-tier Tribunal Judge McGinty found that it was arguable that the Judge had erred in her assessment as to whether or not Article 8 is engaged. It is arguable that she has not in fact made findings regarding the evidence regarding the sponsor and his wife's visits to Nepal to visit the appellant and also in respect of the telephone contact, despite referring to the evidence of those issues.
5. It was also arguable that she had not adequately explained how, given her finding that the appellant had been taking care of land owned by his father, which the Judge considered to be a role leading to income being generated and a means of subsistence, that “that did not amount to financial dependency upon his father who owned the land.”
6. Ms Nnamani, who also represented the appellant at the hearing, submitted that the Judge failed to consider the cultural context in which the appeal took place. The Judge accepted that he is farming land and that it is owned by his father. She also failed to consider the evidence of numerous visits that the sponsor and his wife had made to Nepal and the frequent contact between the parties. She failed to direct her attention to the decision in AA v UK [2011], Ghising [2013] UKUT 567 and Rai [2017].
7. There was ample evidence of remittances up to the date of hearing, the relevant date for the purposes of Article 8. The Judge did not have any proper reasons for rejecting the sponsor's evidence that he did not know he had to keep every single receipt, and he explained that he sent money through several people. She erred in requiring the appellant to show that he had received remittances from the date that his parents moved to the UK.
8. The fact that he tended a small plot of land did not entitle the Judge to conclude that he did not enjoy family life with his parents.
9. On behalf of the respondent, Mr Wilding submitted that the Judge came to a reasoned decision that Article 8(1) was not engaged. She properly applied the authorities including Kugathas [2003] EWCA Civ 31. At [25]
10. In Kugathas Lady Justice Arden concluded that because there is no presumption of family life, such family life is not established between an adult child and his surviving parent or other siblings unless something more exists than the normal emotional ties. Lord Justice Sedley referred to real, or committed or effective support which represented the irreducible minimum of what family life implies.

11. Mr Wilding submitted that she set out the factors which pointed to the relationships being beyond normal emotional ties. Historical injustice was not relevant in determining whether Article 8(1) was satisfied.
12. She found that there were only two money transfers were made before the date of refusal on 14 January 2016 [21]. Those were in the amounts of £225 and £100 during 2015.
13. The fact that there were family visits which she did take into account, does not go to the issue of ties which are beyond normal emotional ties.
14. Ms Nnmamani noted that in Ghising, supra, the Upper Tribunal accepted the judgments in Kugathas had been interpreted too restrictively in the past and ought to be read in the light of the subsequent decisions of the domestic and Strasbourg courts. Some of the Strasbourg court's decisions indicate that family life between adult children and parents would readily be found without evidence of exceptional dependence. In AA v UK [2011] the ECHR found that a significant factor would be whether or not the adult child has founded a family of his own. If he is still single and living with his parents he is likely to enjoy family life with them [18] Rai v ECO [2017]. She submitted that these decisions were referred to, but were not considered by the Judge.
15. During the course of their submissions, the parties agreed that the Court of Appeal had recently considered the decision in Kugathas in the appeal of the Entry Clearance Officer (Sierra Leone) v Edna Kopoi [2017] EWCA Civ 1511 on 10 October 2017.
16. Lord Justice Sales stated at [17] that the leading domestic authority on the ambit of "family life" for the purposes of Article 8 is the decision of the Court of Appeal in Kugathas. He set out the decision of Sedley LJ, who himself accepted the guidance given by the European Commission for Human Rights against the decision in S v UK [1984] 40 DR196 at 198.
17. Sedley LJ noted that there is not an absolute requirement of dependency in an economic sense for "family life" to exist, but that it is necessary for there to be real, committed or effective support between family members in order to show that "family life" exists. Neither blood ties nor the concern and affection that ordinarily go with them are by themselves or together sufficient. The natural ties between a parent and an infant is probably a special case in which there is no need to show that there is a demonstrable measure of support.
18. Lord Justice Sales in Kopoi stated that the judgements of Arden LJ and Simon Brown LJ were to similar effect. Arden LJ held that there is no presumption that a person has a family life, even with members of his immediate family and that family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties, such as ties of dependency.
19. The Court of Appeal held that Kugathas remains good law: see e.g. R (Britcits) v Secretary of State for the Home Department [2017] EWCA Civ396, [61] and [74] (Sir Terence Etherton MR), [82] (Davis LJ) and [86] (Sales LJ). Sir Terence Etherton MR

'pithily' summarised the position at [74], stating that in order for family life within the meaning of Article 8(1) to be found to exist, "There must be something more than normal emotional ties".

### Assessment

20. Judge Courtney, referred to Article 8 decisions including Razgar, Beoku-Betts and Kugathas and stated that the critical issue is whether there is a sufficient dependence, and in particular sufficient emotional dependence by the appellant on his parents, justifying the conclusion that they enjoy family life together.
21. She also referred to Ghising, supra which found that Kugathas had been interpreted too restrictively in the past. She noted that it is not necessary to look for some extraordinary or exceptional feature in the appellant's dependence upon his parents as a necessary determinant of the existence of his family life with them. Nor is it required under Article 8 that financial dependency should be a dependency of necessity [14].
22. She referred to the evidence as to whether he has a family life with his parents which existed at the time of their departure to settle in the UK which has endured beyond it [15].
23. She noted at [18] that the appellant lives with his older brother who is 34 years old. It was asserted that he is also unmarried and is still reliant on his parents for money. She found that it had not been suggested at any point that the elder brother acted as a carer or a guardian for the appellant. However, they can give one another emotional support [18].
24. She had regard to the assertion by the sponsor that he, his wife and his son are so close. She referred to travel documents indicating that the sponsor and his wife visited Nepal on dates identified [19] of her decision, namely during 2012, 2014, 2015 on two occasions and 2016. She noted that in addition to their sons they have a married daughter who also lives in Nepal.
25. Judge Courtney also had regard to the evidence of telephone calls to the appellant about three times a week. He has recently signed up to the Viber app. She noted that there were 41 phone cards. She accepted that such evidence is capable of being corroborative of the intentions of the parties that they communicate by telephone.
26. She had regard to the monies that the sponsor stated he sent to his son. She set out each transfer receipt that had been submitted including the amounts. She found that only two payments identified in [21] were made before the date of the refusal on 14 January 2016.
27. The sponsor claimed that he had sent money prior to 2016 in a "vague fashion." However, he stated when cross examined that he did not realise that he needed to keep evidence of remittances prior to August 2015. He claimed that he had sent money before August 2015, through an agent. Judge Courtney found that the evidence did not suffice to show any substantive financial support prior to the

sponsor being alerted by the refusal decision to the weight placed by the ECO on this factor [21].

28. She found that there was merit in the assertion that the sponsor was unaware of how his son budgeted and that he could be expected to know this if he was maintaining him [22].
29. She noted at [23] that the sponsor contended that the appellant does not work as he is "not educated enough." About two or three years ago he tried to get a job as a labourer but was unsuccessful. His elder son was also unemployed. However, he stated in cross examination that part of the reasons why he wanted his son to come to the UK was so that he could "come here and work and support us." The Judge found that he was therefore clearly employable.
30. She noted the Upper Tribunal's decision in Pun and Others (Gurkhas - policy - Article 8) Nepal [2011] UKUT 377 where the panel stated that "we certainly accept that a contrived dependency will carry little if any weight within Article 8 either when deciding whether family life exists or when assessing proportionality."
31. Judge Courtney noted that the sponsor stated that the appellant and his elder brother do a little bit of farming. She found that the appellant has been taking care of the land owned by his father, a role which is likely to lead to an income being generated and/or a means of subsistence.
32. Having considered the relevant evidence referred to, she did not consider that the appellant enjoyed family life with his parents. She referred to five factors including his age; the length of the separation from his parents; the lack of evidence appertaining to financial support over the period of separation; the fact that he lives together with his older brother and they benefit from one another's mutual support and the responsibilities with which he has been entrusted with regard to farming the land.
33. Having considered this evidence, she concluded that there was no evidence of dependency involving more than emotional ties. The appellant could not therefore succeed on Article 8 grounds outside the scope of the policy.
34. I find that Judge Courtney has undertaken a detailed assessment of the evidence. She has had regard to the relevant authorities which were applicable. Contrary to the assertion in the grounds of appeal, she did consider the evidence of the visits that the sponsor and his wife made to Nepal as well as the contact between the parties. She also had regard to the evidence of remittances up to the date of hearing.
35. I find that the First-tier Tribunal Judge has given sustainable reasons for her conclusion that the appellant had not established that family life existed.

### **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.

No anonymity direction.

Signed

Date 23 June 2018