



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09740/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 27th March 2018**

**Decision sent to parties on
On 1st May 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**ENTRY CLEARANCE OFFICER
NEW DELHI**

Appellant

and

**ALINA LIMBU
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Tom Wilding, a Senior Home Office Presenting Officer
For the Respondent: Mr James Khalid, Counsel appearing by Direct Access

DECISION AND REASONS

1. The Entry Clearance Officer appeals with permission against the decision of the First-tier Tribunal at Hatton Cross hearing centre, who allowed the claimant's appeal under Article 8 of the ECHR against his she did not qualify for entry clearance to re-join her father in the United Kingdom under the Secretary of State's policy in relation to family members of former Gurkhas, first published in 2015.
2. There is no dispute that the claimant is the adult child of a former Gurkha. The appeal turns on whether family life continues to exist between the claimant and her sponsor father. For the Entry Clearance Officer, Mr Wilding accepts that if family life does continue to exist then the First-tier

Tribunal's decision on proportionality is sound and the appeal must be dismissed.

3. The facts of this matter emerge from the evidence of the sponsor father and the written evidence of the claimant herself and are summarised in the First-tier Tribunal decision at paragraphs 9 to 17 thereof.
4. In summary it appears that since the sponsor father left Nepal for the United Kingdom his daughter has remained a student at least until very recently (she is now a qualified nurse) and she has lived, not with any of the rest of her extended family, but with neighbours. She does not have her own bank account, but has an ATM card on her father's bank account into which his pension credits are paid. He telephones her regularly and visits annually. I note also that it was with the claimant's late mother that her father originally came to the United Kingdom although unfortunately her late mother later returned to Nepal and died there and he has since remarried.
5. The First-tier Tribunal Judge found that family life had continued to exist and that the applicant should be granted entry clearance to join her sponsor father in the United Kingdom. The Entry Clearance Officer appealed.
6. The findings of fact of the First-tier Tribunal can be interfered with by this Tribunal only if they are irrational in one of the ways set out at paragraph 90 of the judgment of Lord Justice Brooke in *R (Iran)*. That is to say, that they are contrary to the evidence or a decision which no reasonable judge could make or a decision which the Tribunal simply cannot understand.
7. That high standard is not reached here. There is evidence from an unchallenged witness that his adult daughter is maintained by access to her father's bank account and has continued to live in Nepal as a student while she finished her qualifications and that he would have brought her to the United Kingdom with his first wife, her mother, had he been able to do so at the time. On that basis the finding that family life continues to exist was open to the First-tier Judge and as Mr Wilding conceded, if that is the case the appeal must fail.
8. The appeal of the Entry Clearance Officer is therefore dismissed and the decision of the First-tier Tribunal stands.

Signed: [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Dated: 27 April 2018