



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18129/2016

THE IMMIGRATION ACTS

Heard at Field House
On 12 June 2018

Determination Promulgated
On 13 June 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr THAM BAHADUR BURA MAGAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B B B Magar (sponsor)

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Hollingworth against the decision and reasons of First-tier Tribunal

Judge P-J White who had dismissed the Appellant's entry clearance appeal (made on human rights grounds) in a decision and reasons promulgated on 9 November 2017.

2. The Appellant is a national of Nepal, born on 28 June 1987 and thus already well into adulthood by the time his appeal was heard. As noted already, the appeal lay on human rights grounds only, although that question had to be approached through the lens of the Immigration Rules and Home Office policy, as the judge did. The judge found that the Appellant was not financially or emotionally dependent on his parents, that there was no interference with family life under Article 8 ECHR, such that Article 8 ECHR was not engaged.
3. Permission to appeal was granted to the Appellant by Judge Hollingworth because he considered that the judge had arguably erred by failing to give sufficient weight to the "matrix of matters going to the issue of financial and emotional dependency relating to the Appellant." The opportunity should have been given to the Appellant to produce further evidence, although it was unclear whether or not that had in fact been done. This may have affected the proportionality exercise.
4. Standard directions were made by the tribunal.

Submissions

5. The Appellant was unrepresented, but his father (and sponsor) attended the hearing as had happened in the First-tier Tribunal. A helpful and competent Nepalese interpreter had been provided and all communication at the hearing took place through him. The tribunal explained that the hearing was to determine whether there was a material error of law and that this was not a question of what decision the tribunal might have made for itself. The question was whether the decision reached was open to the judge on the evidence.
6. The sponsor was not in a position to assist the tribunal on any legal issue. The grounds (apparently prepared by the Appellant himself) were of no assistance and it was not easy to see what the source of the grant of permission to appeal was.
7. The sponsor addressed the tribunal on his feelings for his son and how much he wanted his son to come to the United Kingdom.
8. Mr Wilding for the Respondent submitted that there was no material error of law. The findings which Judge White had reached were open to him

(see [19], [20] and [25]) and were in no sense surprising. The Appellant was fully 29 years of age. The onwards appeal should be dismissed.

Discussion – no error of law

9. As the tribunal explained to the sponsor and his supporters, the grant of permission to appeal was difficult to follow. The tribunal considered that it should not have been made. The determination had been prepared by a very experienced judge, who had examined the evidence for himself, with great care. The weight to be given to the evidence was for the trial judge, who saw the witness(es). It had to be said that it would be a rare and most unusual situation for a healthy 29 year adult of either gender to remain emotionally and financially dependent on his/her parents. It was not for the judge to call for further evidence, as the entry clearance application had been made some time ago and it was up to the Appellant (and his family) to obtain advice and to produce the evidence required under the Immigration Rules when making the entry clearance application. The refusal notice issued by the Entry Clearance Officer, as upheld on review by the Entry Clearance Manager, spelt out the disputed issues and it was for the Appellant to respond. Thus there was no unfairness; on the contrary it is clear that the judge investigated the facts of the appeal closely.
10. The findings the judge reached are summarised at [25] of the determination, which draw on [19], [20] and [21]. The evidence is set out and the judge gave full and detailed reasons for reaching his findings. The findings are unimpeachable and must stand. Thus while the family's disappointment is understandable, the judge had no choice but to apply the law. Hence the onwards appeal must be dismissed.

DECISION

The onwards appeal is dismissed

The original decision and reasons stands unchanged

Signed

Dated 12 June 2018

Deputy Upper Tribunal Judge Manuell