



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/21603/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 January 2018**

**Decision & Reasons  
Promulgated  
On 20 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**ARJUN GURUNG  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Ahmed instructed by Everest Law Solicitors  
For the Respondent: Ms A Fijiwala, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Eldridge made on 3 September 2017 dismissing his appeal against the respondent's decision on 30 March 2016 to refuse him leave to enter the United Kingdom pursuant to Appendix Armed Forces of the Immigration Rules HC395 (as amended), as the adult child of a former Gurkha soldier whose mother, his father's widow, has been living in the United Kingdom with indefinite leave to remain since September 2010.
2. In the decision under challenge, the First-tier Tribunal Judge reminded himself of the decisions in *Rai v Entry Clearance Officer (New Delhi)* [2017] EWCA Civ 320, *Ghising & Others (Gurkhas/BOCs: historic wrong: weight)* (Nepal) [2013] UKUT 567 and *Gurung* [2013] EWCA Civ 8 and noted that it

was four and a half years since the sponsor had left Nepal to come to the United Kingdom.

3. At [32]-[38] in the First-tier Tribunal decision, the appellant's circumstances in Nepal are set out and the judge accepted that if it had been open to the appellant's father to settle in the United Kingdom when discharged from the Gurkhas or any earlier stage he probably would have done so and the appellant would then have been born and brought up in this country and would now be a British citizen. However, the appellant could not bring himself within the requirements of the Immigration Rules HC395 (as amended) and the appellant relied on Article 8 of the ECHR, under which he could succeed only if he could show that he continued to have family life with his mother as at the date of decision.
4. The appellant's evidence before the Tribunal consisted of a witness statement from the sponsor, and records of telephone calls and payments from the sponsor to her children in Nepal. The sponsor, on her representative's advice, did not give evidence at the hearing and so any inconsistency or lacuna in the evidence that she advanced was not capable of resolution in cross-examination or by questions from the Tribunal. The witness statement can be given only limited weight as it was not tested or agreed.
5. There was evidence of payments made to Nepal between 2012 and 2013, but to five different named beneficiaries, of which only six were made payable to the appellant, there was no evidence of any remittances at all by the sponsor to her family in Nepal, after the middle of 2013. There was also evidence of a brief period where the sponsor telephoned Nepal in 2017.
6. The First-tier Tribunal Judge considered that the evidence of family life was not strong enough to enable the appellant to succeed under Article 8 ECHR, without the corroborative evidence which the sponsor could have provided had she given oral evidence at the hearing.
7. I have heard argument by Mr Ahmed for the appellant. He pointed out that the sponsor asserted continuing family life in her witness statement, and that the Judge had not made detailed findings of fact on the point at which family life had ceased. He contended that the sponsor was dependent on the appellant.
8. For the respondent, Ms Fijiwala relied on the respondent's Rule 24 Reply and noted that the appellant's representative had chosen not to call the sponsor, to resolve any outstanding issues in oral evidence. The Judge had given an impeccable self-direction on the case law at [24] of the decision. The evidence of remittances covered a very short period and the telephone records did not begin until after the negative decision, for a brief period in 2017. The sponsor's visits to Nepal were all for less than 28 days and she visited all her sons, not just this appellant. Ms Fijiwala argued that the findings were sustainable on the evidence before the First-tier Tribunal.

9. I concur. On the limited evidence before the First-tier Tribunal, I am satisfied that it was unarguably open to the Judge to conclude It was unarguably open to the judge to conclude that he could not be satisfied, to the ordinary civil standard of balance of probabilities, that family life continued between the appellant and sponsor, nor of the mutual dependence required to establish *Kugathas* dependency.
10. I rely in support of this conclusion on paragraphs [13] – [14] of *Patel & Others v Entry Clearance Officer* (Mumbai) [2010] EWCA Civ 17 and *Rai v Entry Clearance Officer* (New Delhi) [2017] EWCA Civ 320 at paragraphs [16] – [19] and [42]. I have been referred also to the decisions of the Upper Tribunal in *Ghising & Others (Gurkhas/BOCs: historic wrong; weight)* (Nepal) [2013] UKUT 567 (IAC) and the decision of the Court of Appeal in *Gurung & Others (on the application of) v Secretary of State for the Home Department* [2013] EWCA Civ 8 but not to any specific passages in either of those judgments.
11. I am not satisfied that there is a material error of law in the decision under challenge. The Judge’s reasoning is proper, intelligible, and adequate to support the conclusions reached.
12. The decision of the First-tier Tribunal therefore stands, and the appeal is dismissed.

### **Conclusions**

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

I do not set aside the decision.

Signed: **Judith A J C Gleeson**  
Upper Tribunal Judge Gleeson

Date: 15 February 2018