



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23393/2016

THE IMMIGRATION ACTS

Heard at Field House
On 22nd May 2018

Decision & Reasons Promulgated
On 06th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR RAMCHANDRA SUNWAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Puar, Counsel instructed by N C Brothers & Co solicitors
For the Respondent: Mr Bramble

DECISION AND REASONS

Introduction

1. The Appellant born on 26th September 2016 is a citizen of Nepal. The Appellant had made application for entry clearance for settlement but that application had been refused by the Respondent on 26th September 2016.
2. The Appellant had appealed that decision as his appeal was heard by Judge of the First-tier Tribunal Pacey sitting at Birmingham on 10th October 2017. The judge had allowed the appeal.

3. Application for permission to appeal was made by the Respondent and granted by First-tier Tribunal Judge Kelly on 10th April 2018. It was said that it was arguable that the Tribunal had failed to have regard to material evidence namely that the Appellant had shown his ability to live life independently in Qatar in 2011 but it was not arguable that when looking at Article 8(2) there had been any error made and that second ground was refused.

Submissions on Behalf of the Respondent

4. Mr Bramble essentially accepted that there was really nothing further for him to add and did not pursue any fresh submissions or points.
5. I indicated that I did not need to hear submissions on behalf of the Appellant and said that I did not find an error of law and provided reasons at the hearing. I now provide my decision with those reasons in writing.

Decision and Reasons

6. The judge granting appeal, had stated that it was arguable the judge had failed to properly explain his findings of the existence of family life between an adult son and an ex-Gurkha soldier father principally because the son appeared to have found employment in Qatar in 2011. The issue was whether Article 8(1) was engaged. The judge had not found the proportionality exercise thereafter undertaken under Article 8(2) contained any arguable error of law.
7. Mr Bramble. did not seek to submit anything further in relation to the first point and conceded factors had been referred to by the judge in his decision. That concession was properly and fairly made. The Respondent's first Ground of Appeal was predicated on the basis that the Appellant in 2011 had gone to seek employment away from Nepal, in Qatar, thereby demonstrating an independent life. The judge had indeed noted that was what the Appellant had done but had at paragraph 12 noted that the Appellant had stayed there only three and a half months due to his poor "slave life" conditions and failure to be paid. He had then returned to Nepal.
8. The Respondent had stated in application that the relevant finding on dependency was at paragraph 22 and that was inadequate. If paragraph 22 was the only examination by the judge of this issue that may very well have been inadequate. However the Respondent failed to reference the findings made by the judge within the decision as a whole. They were:
 - (1) The Appellant's time in Qatar was short lived and a disaster and thereafter he returned to the family home in Nepal.
 - (2) He lived in his father's house.
 - (3) He was not married, had no children or had set up an independent home.
 - (4) He had no employment.

- (5) He was reliant financially upon his father.
- (6) All his siblings and parents were in the UK.
9. The judge was entitled to conclude that Article 8(1) was engaged and thereafter he had considered proportionality within the framework of **Ghising** and other relevant case law. He has specifically found no deception or dishonesty in the Appellant failing to mention his travel to Qatar on an earlier passport (27). He found the Appellant had no criminal convictions, adverse immigration history or any other adverse features. He therefore applied the correct test set out in **Ghising** and **Rai [2017] EWCA Civ 320** and he was entitled to find refusal of settlement was disproportionate.

Notice of Decision

10. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



Date

5/6/17

Deputy Upper Tribunal Judge Lever