



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/00317/2018
HU/00319/2018
HU/00320/2018

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 8th April 2019

On 17th April 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**KRIPA SHANKAR RANA
BIMAL RANA
BHARAT RANA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellants: Mr S Jaisri, instructed by Sam Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are brothers born respectively on 31 May 1987, 2 March 1986 and 26 August 1984. They are citizens of Nepal and appeal against the decision of First-tier Tribunal Judge R Sullivan, dated 10 January 2019, dismissing their appeals against the refusal of entry clearance on human rights grounds.

2. Permission to appeal was granted by Upper Tribunal Judge Canavan for the following reasons:

“Although it was open to the judge to comment on the presentation of the evidence by the Appellants’ legal representatives, it is at least arguable that she failed to make findings on the evidence given by the Appellants’ father as to the up to date situation in light of (i) the finding that is said to have been made by a previous Tribunal in 2016 that family life existed between the Appellants and their parents; and (ii) the fact that the issue did not appear to be raised by the Respondent in the decision letters. Although the grounds are not well particularised, in particular, the third ground is entirely general in nature, they justify more detailed consideration at a hearing.”

Submissions

3. Mr Jaisri submitted that the Sponsor had demonstrated in his oral evidence that he had frequent contact with the Appellants and this was corroborated by the documentary evidence of telephone calls in the supplementary bundle. The application for entry clearance was refused on the basis that the Appellants had failed to establish emotional and financial dependency on the Sponsor. The judge’s conclusion at paragraph 31(b), that there is no current documentary evidence that the Appellants received money transfers from the Sponsor, was contrary to the evidence in the Appellants’ bundle which showed transfers made up until April 2018.
4. Further, the judge failed to deal with the Sponsor’s evidence that the Appellants were emotionally and financially dependent on the Sponsor which was contained in the Sponsor’s witness statement in the following paragraphs, namely:

“43. We feel settled and we feel that the United Kingdom is our home. My wife and I require Kripa Shankar, Bimal and Bharat’s practical support. Kripa Shankar, Bimal and Bharat depend on us emotionally and financially.

44. My wife and I communicate with our children through international calling and viber frequently to maintain contact with them. I enclose evidence to confirm this.

45. My wife and I have travelled to Nepal to see Kripa Shankar, Bimal and Bharat in Nepal to spend time with them, our travel history is as follows...”

The history indicates visits in September 2012, April 2014, February 2015, April 2016, January 2017 and November 2017. All the visits last between one month and four months.

5. Mr Jaisri submitted that the judge failed to deal with the Sponsor's evidence and ignored the pattern that existed of money transfers up until April 2018. The previous decision acknowledged that there was dependency in 2016 such that it gave rise to family life. The documentary evidence showed that financial dependency continued up until 2018 and this combined with the evidence in the Sponsor's witness statement at 43 onwards was sufficient to show that family life continued between the Appellants and their Sponsor.
6. Mr Jaisri referred to paragraph 31(c) of the judge's decision which states: "There is evidence indicating that the Sponsor was unaware of the 1st and 2nd Appellants' educational achievements; unaware that one of them had attended college and unaware that another had attended university. Consequently I am not satisfied that the Sponsor is closely involved with the Appellants' affairs or that he has played a role in helping them to make education choices." He submitted that the judge could not go behind the previous decision which considered the Appellants' educational achievements in 2015 and 2016 and the Sponsor's lack of knowledge of those achievements did not prevent the finding that there was family life at that stage.
7. The only issue raised at the hearing was whether there was emotional and financial dependency. The documents provided showed that there was. There was no challenge by the Respondent in the refusal notice as to whether the Appellants were married. This matter was not put to the Sponsor and there was no evidence that there had been a change in circumstance since 2016. Mr Jaisri submitted that the Sponsor had asserted that family life still existed. There had been no change in circumstances. The Appellants were still dependent and there was no specific challenge to say that the situation had changed. The judge erred in law in finding that there was no family life and this matter was not raised at the hearing.
8. Mr Whitwell submitted that there was no evidence of money transfers between April and November 2018 or up until January 2019 when the decision was promulgated. The judge had asked for the documentary bundle to be resubmitted and the judge was entitled to take into account the lack of evidence for that period.
9. The fact that the Sponsor was unaware of the Appellants' college courses could also be taken into account in deciding whether there was emotional and financial dependency such that there was family life over and above normal emotional ties. Mr Whitwell accepted that there were no findings as to the Sponsor's assertions in his witness statement, but this was not material because there was insufficient evidence given by the Sponsor which could result in a different conclusion.
10. This was a human rights appeal and the judge was not under a duty to give the Appellants an opportunity to deal with issues which would

inevitably arise under Article 8. There was a large bundle of documents and the judge may well have given some documents more weight than others. The judge was entitled to look at family life again notwithstanding the previous findings. Family life moves on as time progresses and all the Appellants were now over the age of 30. The judge had to assess the situation at the date of hearing. The judge was not satisfied that family life continued since the previous decision because there was insufficient evidence to establish that.

11. In response Mr Jaisri submitted that a lack of knowledge in 2016 had not given rise to a finding that there was not family life so the Sponsor's lack of knowledge of the Appellants' educational achievements was not relevant now. The Appellants were directed to submit a supplementary bundle in relation to evidence of contacts, namely phone schedules, not in relation to further remittances. The Sponsor's evidence in any event was enough to counter any lack of documentary evidence and his evidence was not challenged orally. The judge only appears to have considered evidence in relation to education and not dealt with the assertion in the witness statement and said why this was not enough. In terms of emotional and financial dependency this amounted to an error of law.

Discussion and Conclusions

12. This is a human rights appeal. The relevant date for the assessment of whether family life exists is the date of the hearing and the burden is on the Appellants to show that there is family life. The judge found that, on the evidence before him, the Appellants had failed to establish family life. The judge took into account the previous decision and properly applied Devaseelan.
13. The previous decision found that although there was family life there was insufficient evidence of historic injustice such that the refusal of entry clearance was proportionate. There was no evidence before the previous Tribunal that, but for the historic injustice, the Sponsor would have applied for settlement sooner when the Appellants would all have been dependent children.
14. I find that the judge was not bound by the finding that family life existed in 2016 and was entitled to look at the up-to-date situation. The judge found that there was a lack of documentary evidence to support the contention that there had been regular contact and regular financial support. Whilst some of the confusion in relation to the evidence could be the fault of the Appellants' representative's failure to submit clear and cogent bundles, the judge looked at the situation since the previous decision. He took into account the reduction in financial support and the lack of remittances since April 2018. The Sponsor and his wife had not visited since March 2018. The judge found that there was no current documentary evidence to confirm the Appellants' place of residence or their respective marital

status. In essence the judge found that there was insufficient evidence that family life currently existed.

15. The judge's concluded at paragraphs 31 and 32:

"31. In the light of the evidence summarised above I find as follows:

- (a) I am not satisfied that the Appellants, or any of them, are now financially dependent on the Sponsor;
- (b) There is no current documentary evidence that the Appellants receive money transfers from the Sponsor;
- (c) There is evidence indicating that the Sponsor was unaware of the 1st and 2nd Appellants' educational achievements; unaware that one of them had attended college and unaware that another had attended university. Consequently I am not satisfied that the Sponsor is closely involved with the Appellants' affairs or that he has played a role in helping them to make education choices;
- (d) I am not satisfied that there has been regular or recent telephone contact with the Sponsor and the Appellants (or any of them);
- (e) I am not satisfied that the Appellants (or any of them) are currently emotionally dependent on the Sponsor;
- (f) I am not satisfied that the three Appellants remain unmarried and have not formed family units of their own.

32. In light of the findings set out above as to financial and emotional dependency, the ages of the three Appellants, the evidence that they live together (thus being in a position to give one another practical support) and the intervals between the Sponsor's visits to Nepal, I am not satisfied that any of the Appellants share family life with the Sponsor for the purposes of Article 8. It has not been suggested that any of them has established private life calling for protection in the United Kingdom."

16. These findings were open to the judge on the evidence before him. The assertions made at paragraphs 43 to 45 of the Sponsor's witness statement were insufficient to substantiate emotional and financial dependency, or family life, given the lack of documentary evidence which the Appellants ought to have been able to produce if the dependency had continued up until the date of hearing.

17. The judge's finding that at the date of the decision there was insufficient evidence of family life was open to the judge on the evidence before him.

There was no need for the judge to put matters to the Sponsor when it was clear in a human rights appeal that the Appellants had to establish family life and the burden was them to produce sufficient evidence to show that. The fact that in the previous decision the judge was satisfied on the evidence that there was family life did not prevent the judge from looking at the situation at the date of hearing.

18. The judge properly considered whether family life existed at the date of hearing. There was insufficient evidence to show that family life had continued since the previous decision in 2016. There was no error of law in the decision promulgated on 10 January 2019. Accordingly, I dismiss the Appellants' appeal. No anonymity direction is made.

J Frances

Signed

Date: 15 April 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed

Date: 15 April 2019

Upper Tribunal Judge Frances