



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: HU/00381/2021**

**Appeal**

**[UI-2021-001338]**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 16<sup>th</sup> March 2022**

**Decision & Reasons  
Promulgated  
On the 22<sup>nd</sup> April 2022**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN  
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**GURUNG GANESH**

**and**

**ENTRY CLEARANCE OFFICER (SHEFFIELD)**

Appellant

Respondent

**Representation:**

For the appellant:

Mrs T. Srin dran, instructed by SAM Solicitors

For the respondent:  
Officer

Ms J. I sherwood, Senior Home Office Presenting

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 08 December 2020 to refuse a human rights claim in the context of an entry clearance application as the adult child of a former Gurkha.

2. First-tier Tribunal Judge Latta ('the judge') dismissed the appeal in a decision promulgated on 12 November 2021.
3. It may be useful to set out some of the background to the appeal in order to place the First-tier Tribunal decision in context.
4. The appellant's first application for entry clearance was made in 2009. His witness statement and that of his father (the UK sponsor) do not outline the exact date of the application. The appellant's witness statement says that he also got married in 2009. The exact date of the marriage is not clear. Nor is it apparent from the translation of the divorce certificate, which just states that the marriage took place in 2009. It is unclear whether the appellant was married when he made the first entry clearance application. It is said that the application was refused because of a discrepancy in the details on the appellant's passport. The appellant did not appeal.
5. The appellant's parents were granted leave to enter the UK in 2010. During this period the appellant was living an independent life with his wife. In 2014 they had a child. It is said that the couple separated and that his wife returned to live with her family. The appellant was financially dependent upon his parents for support. In 2015 he made another application for entry clearance, which was refused on the same basis. The appellant did not appeal.
6. The appellant made a third application for entry clearance in January 2018. The application was refused. There was little evidence to show that the situation had changed in any marked way since the application in 2015, save that the appellant's separation from his wife was formalised by a divorce in 2017.
7. The appellant appealed the third decision to refuse entry clearance. First-tier Tribunal Judge Gibbs dismissed the appeal in a decision promulgated on 15 July 2019. She considered the evidence put forward at the time, including the evidence given by the UK sponsor. She directed herself to the correct question i.e. whether the appellant could show family life with the sponsor for the purpose of Article 8(1) of the European Convention. She directed herself to the correct legal framework relating to the assessment of family life between adult relatives citing *Ghising (Gurkhas/BOCs: historic wrong: weight) Nepal* [2013] UKUT 567 (IAC), *Kugathas v SSHD* [2003] EWCA Civ 31, and *Rai v ECO* [2017] EWCA Civ 32. The judge reminded herself that the appellant needed to show that his family life went beyond the normal ties between adult relatives by demonstrating that there was real, effective and committed support between him and his parents.
8. The judge noted that the appellant had lived independently from his parents when he was married. She found that the mere fact of his divorce was not sufficient to 'reignite' a family life with his parents. She rejected

the assertion that he had always been financially dependent upon his parents and had never worked to support his wife and child. The judge took into account the fact that the appellant is university educated and that his brother had been able to work to support his family. She noted that there was some evidence of contact between the appellant and his parents. However, it was limited and showed a large number of missed calls rather than any meaningful contact. The evidence relating to financial dependency only ranged from 2017 and did not support his assertion that he had always been financially dependent on the sponsor. The money varied in amount. This called into question whether it was committed and real support. The tenancy agreement in Nepal was in his name and not his father's. Having considered the evidence, the judge concluded that the appellant had no more than the normal emotional ties that one might find between an adult child and their parents.

9. The appellant made a further application for entry clearance in 2020, which was refused in a decision dated 08 December 2020. The decision is the subject of this appeal.
10. Judge Latta summarised the respondent's reasons for refusing the application as well as the oral and documentary evidence before him. He began his findings with a correct reference to the guidance given in *Devaseelan v SSHD* [2002] UKIAT 702. He took the previous First-tier Tribunal decision as his starting point and considered the findings made by Judge Gibbs. He noted that the new issue raised in this appeal was the assertion that the appellant suffered from depression such that he required the additional support of the sponsor. The sponsor told the judge that they had been unable to obtain evidence relating to the appellant's mental health because he lived in a remote area. The judge noted that when the sponsor was asked what he thought about the appellant's condition he said: 'I feel that he is doing better these days' [37]. The judge also found that the sponsor's claim that the appellant had suffered from depression since 2014 was undermined by the fact that it was not mentioned in the previous appeal. Judge Latta concluded that there was insufficient evidence to show on the balance of probabilities that the appellant was suffering from depression as claimed [40].
11. The judge went on to consider whether Article 8(1) was engaged on the facts of this case. At [43] he referred to the correct test drawn from *Kugathas* as to whether there is 'real committed or effective support'. Judge Latta concluded that no adequate explanation had been put forward to explain why the issue of depression had not be put forward in the previous appeal. He noted that there was some evidence of ongoing financial support, but concluded that there was nothing in that evidence to suggest that he should depart from the findings made by Judge Gibbs in 2019. Having reviewed the circumstances since the last hearing he concluded that there was insufficient evidence to show that there was real, committed and effective support that went beyond the normal ties between adult family members. Article 8 was not engaged.

12. The appellant appealed the First-tier Tribunal decision on the following grounds:
  - (i) The judge 'erred in concluding that a married adult son could not be emotionally or financially dependent on his parents and failed to conduct an adequate analysis of the strength of their relationship. The decision was contrary to the findings in *Rai*.
  - (ii) The judge erred in failing to consider the fact the appellant had only sought traditional treatment for his depression.

### **Decision and reasons**

13. Having considered the First-tier Tribunal decision, the grounds of appeal, and the oral submissions made by the parties we conclude that the First-tier Tribunal decision does not involve the making of an error on a point of law.
14. At the hearing, Mrs Srin dran argued that the judge failed to conduct an adequate assessment of the issue of dependency. The judge focussed on Judge Gibbs' decision and did not see any reason to depart from it. She accepted that the only circumstance that was different to the factual matrix considered by Judge Gibbs were the assertions made about the appellant's mental health. She submitted that an explanation had been given as to why there was so little evidence in respect of his health.
15. It is understandable that the appellant disagrees with Judge Latta's decision because he was unsuccessful in his appeal. However, nothing in the grounds put forward on his behalf identify an error of law in the First-tier Tribunal decision.
16. The judge was obliged by law to begin his consideration by using Judge Gibbs' decision as the starting point: see *Devaseelan*. Judge Gibbs had considered the history in some detail. At the time, the appellant was divorced from his wife and continued to receive financial support from his parents. Judge Gibbs referred to the relevant case law. *Rai* is not authority to say that all adult children of former Gurkhas should be found to have a family life with their parents. Each case must still be considered on its facts. It was open to Judge Gibbs to take into account the fact that the appellant had lived an independent life with his wife for a number of years. No doubt it would have been difficult when they separated.
17. Judge Gibb took into account evidence to show that there may have been some contact between the appellant and his parents and that his father provided sporadic financial support, but it was open to her to conclude that the evidence did not go beyond the normal level of support that one might expect between adult relatives in the same circumstances.

18. At the date when this appeal was heard there was little evidence to indicate any material change in circumstances in the relationship between the appellant and his parents. Many families sent remittances to relatives abroad and keep in contact by telephone but something beyond those normal emotional ties is needed. Contrary to the assertion made in the grounds, 'dependency' is not the test although it may form part of an overall assessment of the strength of potential family ties.
19. Judge Latta took into account the explanation as to why there was no medical evidence relating to the appellant's mental health. In the absence of any evidence to show the nature and extent of any mental health problems that the appellant might be experiencing, it was open to the judge to conclude that there was insufficient evidence to show that he was suffering from depression as claimed or that it had strengthened the ties between the appellant and his parents. Given that this was the only circumstance that was said to have changed since Judge Gibbs' decision, it was open to the judge to find that there was no good reason to depart from her earlier findings.
20. For the reasons given above we conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.

## DECISION

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

Signed M. Canavan                      Date 16 March 2022  
Upper Tribunal Judge Canavan

---

### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email**