



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

**Appeal Number: UI-2022-002708
On appeal from HU/53465/2021
[IA/09144/2021]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 6th October 2022**

**Decision & Reasons Promulgated
On the 02 November 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SUDIP RANA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed, Counsel instructed by No 12 Chambers

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nepal. His application for entry clearance as the adult dependent child of a widow of a former Gurkha soldier was refused by the respondent on 7th June 2021. The respondent was not satisfied that the appellant has established a family life with his mother

over and above that between an adult child and parent so that Article 8 is engaged. Alternatively, the respondent concluded that the decision to refuse entry clearance is proportionate to the legitimate aim of protecting the rights and freedoms of others and the economic well-being of the country.

2. The appellant's appeal was heard by a panel comprising of First-tier Tribunal Judge Parkes and First-tier Tribunal Judge Taylor ("the panel") and dismissed for reasons set out in a decision dated 21st April 2022. The background to the appeal is set out at paragraphs [5] to [14] of the decision. The hearing before the panel proceeded on submissions only. The respondent was not represented. At paragraph [32], the panel recorded the "*... Rai test of real, committed and effective support can be met by either financial or emotional support and the basis of the first appellant's appeal was financial support only ...*". At paragraph [44], the Tribunal noted that the relevant authorities establish in short, "*... there is no legal or factual presumption as to the existence or absence of "family life" for the purposes of Article 8, and the approach of the European Commission for Human Rights has not included any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will however not of itself justify a finding of "family life". There has to be something more*".
3. The panel's findings and conclusions are set out at paragraphs [47] to [59] of the decision. At paragraph [51], the panel said; "*... At the appeal hearing the First Appellant based his claim solely on his financial dependence on the Sponsor*". The panel referred to the evidence before them and at paragraph [53], said:

"Nevertheless we find that, on the balance of probabilities, the First Appellant is financially dependent upon his mother, this alone is insufficient for us to find that family life within the meaning of Article 8 (1) exists. The First Appellant has had a family of his own, moved out of the family home, lived in a different area of Nepal with his then wife and now lives in Lalitpur with his daughter. He has not physically lived with the Sponsor for nearly 11 years and the level of contact they maintain is not demonstrative of more

than the normal emotional ties between a parent and adult child. The First Appellant's daughter has been raised without any direct, hands-on assistance from the Sponsor since she was 8 years old, she is now 19."

4. At paragraph [54] of the decision, the panel noted the appellant's previous reliance upon 'emotional dependence', and said it had considered that, even though it was not pursued at the appeal hearing. The Tribunal noted that the evidence of emotional dependence was based upon telephone and video calls, and at paragraph [55], concluded that the level of communication does not indicate anything other than the normal emotional ties between a parent and adult child. The Tribunal therefore concluded that the appellant has failed to establish that he has a 'family life' with his mother for the purposes of Article 8.
5. The appellant claims the panel erred in law in reaching its decision that Article 8 is not engaged. It is said that the First-tier Tribunal erroneously proceeded upon the basis that the claim made by the first appellant was based solely on his financial dependence on his mother. It is said that at no point did Counsel concede that the appellant relied upon financial dependence only. The appellant claims that if the panel had properly considered the evidence before it as a whole, it would have come to the conclusion that the relatively low threshold required was met, to establish that Article 8(1) is engaged.
6. Permission to appeal was granted by First-tier Tribunal Judge Povey on 7th June 2022. It was noted that the arguable failure by the panel to consider and make findings on the claimed emotional dependency was material to the outcome of the appeal.
7. The respondent has filed a rule 24 response dated 2nd June 2022 and concedes there is a material error of law in the decision of the First-tier Tribunal. That was also the position adopted by Mr Walker before me.
8. Dependency, in the *Kugathas* sense, is a question of fact. The irreducible minimum of what family life implies remains that which Sedley

LJ described as being whether support is real or effective or committed. The love and affection between an adult child and parent do not of itself justify a finding of a family life. There has to be something more. Each case is fact sensitive, and the existence of family life after an individual has achieved his or her majority is a question of fact without any presumption, either positive or negative, for the purposes of Article 8. It is a question of fact whether the appellant had demonstrated that he had a family life with his mother, which had existed at the time of her departure to settle in the United Kingdom and had endured beyond it, such as to fall within the scope of Article 8.

9. The parties agree that the decision of the First-tier Tribunal must be set aside. I do not therefore need to say anything further about the grounds of appeal. I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal. Both Mr Ahmed and Mr Walker submit that in light of the error of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. No findings can be preserved. I am satisfied that the appropriate course is for the appeal to be remitted to the FtT for hearing afresh. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

NOTICE OF DECISION

10. The decision of First-tier Tribunal dated 21st April 2022 is set aside.
11. The appeal is remitted to the First-tier Tribunal for rehearing, with no findings preserved.
12. The parties will be notified of a fresh hearing date in due course.

Signed **V. Mandalia**

Date: 7th October 2022

Upper Tribunal Judge Mandalia