



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002424
UI-2023-002426
First-tier Tribunal No: HU/58455/2021
HU/51217/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE M SYMES

Between

**RAM PRASAD RAI
PREM KUMAR RAI
(No anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill
For the Respondent: Ms J Isherwood

Heard at Field House on 9 August 2023

DECISION AND REASONS

1. The Appellants (who for convenience I shall refer to as Prem and Ram) are citizens of Nepal born on 28th March 1972 and 8th June 1979, respectively who appeal against the decisions of the First-tier Tribunal dismissing their appeals, themselves brought against entry clearance refusals as the adult dependent relatives of a former member of the Brigade of Gurkhas. Notably whilst these two appeals failed in the First-tier Tribunal, that of the Appellants' sister, Hira, was allowed, and to my knowledge no further challenge has been successfully brought against that decision by the Respondent.

2. It was agreed before the First-tier Tribunal that the sole issue was the establishment of family life: the Secretary of State would not dispute the disproportionality of the refusal if that matter was resolved in the Appellants' favour. The Appellants argued that there was real, committed or effective support between them and their father in the UK, shown by ongoing contact and the extended period the family had been together for the Sponsor's wife's funeral in 2022, arising in the context that Ram had lost his own wife to a premature death in 2013; they would after all have been born British (to a UK-settled British citizen father) had it not been for the historic injustice.
3. The First-tier Tribunal noted the Sponsor's age and made due allowance for that factor, albeit that there was no evidence indicating that he suffered from any particular memory problems due to any underlying medical or neurological condition. It concluded that
 - (a) Parts of his evidence relating to his family circumstances were inexplicably vague: on balance he had not been fully credible or reliable.
 - (b) His evidence was often very vague without explanation as the matters raised were straightforward: whilst he gave clear and straightforward answers in relation to Hira Kumari's circumstances, he was less so vis-à-vis the other Appellants, and was vague as to how many grandchildren he had, where they lived, and could not even recall the name of Ram's child.
 - (c) He was unable to say when Prem went to live in Kathmandu, how long he had been there or, indeed, what he was doing there, suggesting only limited contact between them. On the totality of the evidence, Prem appeared to be living an independent life as a family unit with his wife and child in Kathmandu, both he and his wife working; whilst there were genuine ties of love and affection between them and the Sponsor, and they came together in order to perform the necessary cultural funeral rites for the Appellants' mother, there was no element of extra dependency such as to constitute family life between adults.
 - (d) Ram had admittedly been living and working in Saudi Arabia from October 2010 to January 2020, living outside the family home and not supported by the sponsor; indeed he appeared to have been sending money back to support his own wife, prior to her death, and his child, back in Nepal. The case put was that his family life had rekindled following his return to Nepal, but given the sponsor came to the UK in September 2015 he clearly had not rejoined his family unit at that time. There was no evidence by way of bank statements to show any savings from his work abroad suggestive of dependency, little evidence of remittances, and the suggestion that Hira was passing funds on to him, a mature man with a history of significant expatriate earnings, when she was already taking care of a disabled sister, a stepmother, and possibly other nieces or nephews, was unlikely. The call records were vague as to who had been contacted.
 - (e) Notwithstanding these adverse findings on the situation of her brothers, Hira had never left the family home in Nepal, cared within the family unit for her sister Puspa and for her niece following the death of her sister-in-law; the evidence of ongoing contact with the Sponsor by phone calls was plausible given his detailed

answers about this at the hearing. She was a member of the sponsor's household when he departed to the UK and had remained dependent upon him thereafter for both financial needs and emotional support, and accepted his advice on taking a money loan when his own financial difficulties prevented him helping her. On balance it could be inferred that she would be a British national but for the historic injustice and thus the immigration decision was disproportionate. Her appeal succeeded.

4. Grounds of appeal of 19 January 2023 argued that the First-tier Tribunal had erred in law because
 - (a) The decision letters had not put the fact of remittances in issue but the Judge had gone further and effectively rejected the veracity of that evidence, and failed to make any allowance in practice for the Sponsor's age notwithstanding directing himself of the desirability of so doing.
 - (b) The positive findings as to the relationship between the Sponsor and his daughter were relevant to the general credibility of his evidence, and difficulties of recollection were something that was as much in his credibility's favour as against him, given his age.
 - (c) Simply stating that there was no more than "contact" between the Appellants and Sponsor failed to take account of the scope of evidence of dependency relied on: eg the latter's visit to Nepal from May to August 2022, the family's recent bereavement, the father's tearfulness and fear at the prospect of returning to the UK, the evidence that Prem spoke to his father almost daily and the fact the Sponsor lived by himself in the UK.
5. Permission to appeal was granted on 23 May 2023 by Judge Austin for the First-tier Tribunal because the grounds evinced arguable errors of law.
6. Ms Revill submitted that the First-tier Tribunal had effectively gone behind the stance taken by the Respondent in making findings as to the existence of family life. This was not a challenge predicated on irrationality but on the quality of reasons.
7. Ms Isherwood submitted that there was no evidence beyond that found in the First-tier Tribunal; no record of proceedings had been sought from the Tribunal.

Decision and reasons


8. I do not consider that there was any duty on the First-tier Tribunal to take a different approach than it did as a matter of fairness. Lord Mustill in *Doody* [1993] UKHL 8 held that the "principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision." Taking Ram's refusal letter as a reference point, the decision maker stated "I accept that you may receive financial assistance from your father, but you have not demonstrated that you are genuinely dependent upon him." So the possibility of financial assistance was accepted; however the broader context of genuine financial dependency was challenged. The

Secretary of State's thinking was essentially that the broader financial circumstances of Prem and Ram was unclear. The First-tier Tribunal upheld that concern, adding further reasons for the same conclusion on its own account. There is nothing procedurally unfair or substantively unreasonable in its approach.

9. The First-tier Tribunal was clearly aware of the Sponsor's vulnerability and the possible difficulties he might have in recollecting details. It was fully entitled to note the difference in the quality of his evidence vis-à-vis Ram and Prem as opposed to relating to his daughter Hira and to hold that that difference was not accounted for simply by problems of recollection, which might reasonably be assumed to afflict his memory of each aspect of his family relations similarly.
10. Finally I conclude that the First-tier Tribunal was entitled to find that the more intense recent contact between Ram and Prem and the Sponsor was due to the family coming together in a time of mourning rather than being reflective of a long term close relationship of emotional dependency maintained consistently over the years that was likely to endure after the mother's funeral. The reality of this case, on the Tribunal's reasonable findings, is that Prem and Ram have long been independent of the rest of the family.

Decision:

The decision of the First-tier Tribunal contained no material error of law.
The appeal is dismissed.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

12 October 2023