



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004250

First-tier Tribunal No: HU/53805/2022  
LH/01320/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

13<sup>th</sup> November 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR. KESHAV RANA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr R Sharma of Counsel, Everest Law Solicitors  
For the Respondent: Mr N Wain, Home Office Presenting Officer

**Heard at Field House on 27 October 2023**

**DECISION AND REASONS**

1. The Appellant is a national of Nepal born on 14 April 1978. On 21 December 2021 he made an application for entry to the UK as the dependant of Mr Chandra Bahadur Rana, who served in the Brigade of Gurkhas until July 1969.
2. This application was refused in a decision dated 2 June 2022. The Appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Courtney for hearing on 26 July 2023. In a decision and reasons promulgated on 14 August 2023, the determination was promulgated dismissing the appeal on the basis that the Judge did not consider that the Appellant had a protected family life with his parents pursuant to article 8(1) of the ECHR.
3. The Appellant made an application for permission to appeal to the Upper Tribunal, in time, on the basis:

- (i) the First-tier Tribunal Judge had erred in her application of the correct legal test as to whether or not family life exists between the Appellant and his parents;
  - (ii) the judge failed to take account of material evidence and or/failed to give anxious scrutiny to the evidence before her.
4. Pursuant to the grounds of appeal it was submitted that the judge had set the bar too high in imposing a test of dependency as per Patel [2010] EWCA Civ 17; gave no substantive reasons as to why the remittances did not constitute real, committed or effective support of the Appellant by his father and failed to consider the fact that the Appellant is living in the family home as an additional component of support from the father to the son as he lives rent free and also provides reciprocal support to his mother who is in Nepal following medical treatment. It was submitted the judge failed to give reasons as to why the unchallenged evidence as to the family circumstances did not amount to support for the purposes of Article 8(1) and a letter from the Appellant's mother's doctor was not taken into account.
  5. Permission to appeal was granted by First-tier Tribunal Seelhoff in a decision dated 2 October 2023 on the following basis:
    2. *Ground 1 asserts that the Judge erroneously imposed a test of 'dependency' when assessing whether there was family life between the Appellant and the Sponsor.*
    3. *Given the form of words used by the judge at the close of paragraph 24, this is arguable.*
    4. *Ground 2 asserts that the judge failed to consider the fact that the Appellant lives with and cares for his mother, the wife of his sponsor, could show family life as there is no requirement that the support flows one way only.*
    5. *Although he notes the Appellant is apparently caring for his mother [28] the judge does not consider discretely whether this is indicative of family life."*

#### *Hearing*

6. At the hearing before the Upper Tribunal, Mr Sharma sought to rely upon the grounds of appeal. He accepted that at [9] the judge did state the correct test of real, committed and effective support but he submitted that the judge had lifted this from the terms of the Entry Clearance Officer's refusal decision and had then in fact erred by going on to refer to two factors, whether there ties over and above normal emotional ties between an adult child and a parent and the effect of injustice as to whether the Appellant had had a normal life. Mr Sharma further referred to [12] and [24] of the Judge's decision and reasons.
7. Mr Sharma made reference to the Court of Appeal judgment in Mobeen [2018] EWCA Civ 886 at [46] and submitted that notwithstanding the reference to dependency, the Court of Appeal had directed itself as to the correct test at [47] of real, effective and committed support and had made reference at [44] to the judgments in Kugathas [2003] EWCA Civ 31, Singh [2015] EWCA Civ 630 and Britcits [2017] EWCA Civ 368, all of which have clarified the *Kugathas* test. Mr

Sharma submitted that the term dependency is not the right term to use in these cases: see [47] and that *Mobeen* was not a complete answer.

8. In relation to ground 2, Mr Sharma referred to the evidence and submitted it was not clear what the judge found in relation to the Appellant's place of residence at [26], as the judge seems to be referring to an inconsistency that the Appellant lives in his father's home and the judge does not reach a conclusion at [28] as to whether the Appellant's mother is living with him or not. The Sponsor was not challenged on his account in evidence as to the situation regarding his wife following medical treatment. Mr Sharma submitted that if the Appellant was caring for his mother, this was a relevant factor going to the engagement of Article 8(1), that there was a low threshold and cultural aspects had to be taken into account but were not by the judge, who concluded at [29] that Article 8(1) was not engaged and in so doing she erred materially in law.
9. In his submissions, Mr Wain, in relation to the first ground of appeal, acknowledged that it is true at [9] that the judge was quoting from the Entry Clearance Officer's refusal but the judge also referred to *Kugathas* at [14] and the correct test with reference to whether the ties go above normal emotional ties. The judge was clearly aware of the relevant test, see the last sentence of [24], and that *Mobeen* at [46] did not distinguish consideration of Article 8(1): see [44]. The cases were obviously relevant to this case. Mr Wain acknowledged that Article 8(2) and the issue of historic injustice was clearly different from the case of *Mobeen* however, something has to be found as more than normal emotional ties: see [44] and [46]. Mr Wain submitted that this approach was consistent with the judge's approach at [24] and the fact financial support had been evidenced was not sufficient. He also drew attention to the judge's findings at [20] in relation to evidence of the Appellant's previous employment and [21] where he referred to being a trained welder earning 1,000 rupees a day.
10. At [22] the judge accepted that it was more probable than not that during the currency of his marriage, from 2010 to 2021, the Appellant and his wife were living and working independently of his family and this was the context in which the judge considered the case. In terms of whether the Appellant was living in the family home, the judge found at [28] that the evidence was exaggerated and there were problems with the evidence as to when the Appellant's mother was living where. Mr Wain submitted the judge did not accept the accommodation arrangements and that the judge was entitled to conclude, at [29], that Article 8(1) was not engaged.
11. In reply, Mr Sharma submitted that read together, [9] and [14] make clear that the judge was applying the wrong test of dependency rather than the test of real, effective and committed support and that the judgment in *Mobeen* had been made without reference to the judgments in *Uddin* [2020] EWCA Civ 338 or *Patel* (historic injustice; NIAA Part 5A) [2020] UKUT 00351(IAC) which cast doubt on the dependency test, which he submitted was inapplicable and that the judge had failed to refer to more recent cases which call into question the absolute nature of such a test.
12. Mr Sharma also pointed out that the judge found there was family life between the Appellant and his father up until his marriage in 2010, see [22]. In relation to the Sponsor's evidence he pointed out that this evidence had not been challenged, see [28] and there was no inconsistency with the Appellant's mother living in one place, in for example, December and then somewhere else i.e. with the Appellant in January. Mr Sharma submitted that the Appellant had not been

asked about this so it was wrong for the judge to find against the Appellant on that point or to fail to reach a conclusion which should have been made and placed in the balance.

13. I reserved my decision, which I now give with my reasons.

*Decision and reasons*

14. I have concluded that the Judge made material errors of law in her decision and reasons in concluding that the Appellant's relationship with his parents did not constitute real, effective and committed support and engaged article 8(1) of ECHR.

15. The Judge's initial direction is set out at [9] which provides as follows:

*"9. The Appellant's right to family and private life had been considered. The ECO had taken account of **Kugathas v SSHD [2003] EWCA Civ 31, Gurung v SSHD [2013] EWCA Civ 8 and Ghising and others (Gurkhas/BOCs: historic wrong; weight) [2013] UKUT 00567 (IAC)**. The Appellant had not demonstrated 'real' or 'committed' or 'effective' support from his father. The ECO was not satisfied that Mr Rana had established a family life with his father over and above that normally enjoyed between an adult child and his parent. Article 8 was not engaged...]*

16. The Judge further found as follows at [12] of the decision:

*"12. A child's bond with his or her parents can remain in existence despite voluntary separation: see **Sen v Netherlands (2003) 36 EHRR 7**. It has been recognised that family life may continue between parent and child even after the child has attained his majority: see **Etti-Adegbola v SSHD [2009] EWCA Civ 1319**. The critical issue is whether there is sufficient dependence by the Appellant on his father (or vice versa) to justify the conclusion that they enjoy family life together."*

17. Whilst there is nothing wrong with the Judge's self-direction I accept Mr Sharma's submission that the error lies in the manner in which the self-direction was applied to the particular facts of this case, in particular given that the *Kugathas* test is not the same as the *Gurung* test, but in Gurkha cases the test is one of real, effective and committed support. The Judge at [27] did not consider that the regular communication between the Sponsor and the Appellant of 3 to 5 times a week demonstrates anything more than normal emotional ties and in so doing I find erred in law in applying the wrong test.

18. And at 24 the judge held, on the issue of financial support:

*"24. The Sponsor states that he sends his son £50 a month [WS §10]. He has supplied 37 remittance receipts, one dated 28 September 2018 and the remainder issued on various dates over a period of 3½ years, between 10 September 2019 and 21 January 2023 [AB pages 66 - 102]. The majority of these are for sums in the region of £50 (8,400NPR). In a covering note the Sponsor states: 'There were more but I threw them. I didn't know I had to keep them. From 2015-2018 I used Hundi to send my sons money. There are no records for it' [AB page 64]. In his witness statement of 25 July 2023 the Appellant says: 'I regularly withdraw cash from my bank account for personal expenses. The withdrawn amount typically ranges between NPR*

*10,000 to 15,000, which I utilize to cover my food expenses and utilities. As I live in the family house owned by my mother, I do not incur any rent expenses, which allows me to allocate a significant portion of the withdrawn funds towards household expenditures [§1]. Furthermore, I also utilize the withdrawn cash to pay for my mother's necessities, including her food expenses and utility bills. Additionally, approximately NPR 25,000 was spent on my mother's medical bills at Kist Hospital. The medical expenses were paid in instalments, as reflected in the bank statement' [§2]. In my judgment the level of financial support that has been evidenced does not of itself suffice to found a claim of dependency. "*

19. I find that it is clear that the Appellant is in receipt of financial support from the Sponsor. The Judge also made reference to and it was not disputed that the Sponsor had visited Nepal for 3 weeks in November and December 2022 and there were screenshots from Whatsapp and Viber calls, which demonstrate ongoing and regular communication between them. I find that the Judge has failed to provide clear reasons as to why the level of financial support evidenced does not suffice to find a claim of dependency, given the low cost of living in Nepal and that she failed when conducting her assessment to consider all the evidence in the round, including the evidence of regular communication.
20. Of crucial importance, however, is the Sponsor's evidence that the Appellant's mother and wife of the Sponsor has undergone hospital treatment in Nepal in November and December 2022 and was at home there resting and living with the Appellant albeit she was also spending time with his sister, Devi in Lalitpur, Nepal [28]. Whilst the Judge noted the Sponsor's evidence she failed to make any finding as to the impact of the presence of the Appellant's mother, his care for her, including financial support paying for the medical expenses and her food as recorded by the Judge at [26]. I consider that the Judge erred in that this was clearly material evidence which she failed to take into consideration when assessing whether article 8(1) was engaged.
21. I sought the parties' views as to remedy if I found a material error of law and they were content that I re-make the decision, which I proceed to do.
22. The Appellant's solicitors, in compliance with the standard directions had submitted a revised bundle with witness statements from the Appellant and the Sponsor, evidence of communication between them and financial support in the form of bank statement and a short supplementary bundle upon which they sought to rely, which includes a further bank statement dated 2 August 2023 and screenshots of calls including video calls from the Sponsor to the Appellant from 31 July 2023 through to 16 October 2023.
23. I find, having set aside the decision of the First tier Tribunal Judge, that the Appellant has at all material times lived in the familial home. This was his evidence in his witness statement at [4] AB 2 and that of his father and Sponsor. It is also consistent with the evidence given by the Sponsor in the appeal of the Appellant's brother, Kiran at [6] AB 143 that Kiran lived with his brother Keshav and (at that time his wife) in the family home.
24. I further find that the Sponsor has provided the Appellant with financial and emotional support, which is evidenced through remittance records at AB 64-102 and the screenshots of regular communication at AB 111-140. I accept the Sponsor's evidence that he has financially supported his adult children, including

the Appellant, since he arrived in the United Kingdom since 2015, albeit there is an incomplete record of remittances they date back to 2018.

25. I take account of the fact that the Appellant's mother has been living with him in the family home following hospital treatment for both heart disease and acute gastroenteritis: AB 54-63 and I find given her age [78] and frail health as she suffers from a number of medical conditions that she is dependent upon the Appellant for care whilst she stays with him. I bear in mind the judgment in *Uddin* (op cit at [36]):

*"36. The existence of family life after a young person has achieved his or her majority is a question of fact. There is no presumption, either positive or negative, for the purposes of Article 8. Continued cohabitation will be a highly material factor to be taken into account and while not determinative, a young adult still cohabiting with a family beyond the attainment of majority is likely to be indicative of the continued bonds of effective, real or committed support that underpin a family life."*

26. I find in light of all the evidence that the Appellant has shown on the balance of probabilities in light of the evidence demonstrated by screenshots of calls and bank statements showing ongoing financial support over 5 years that he is in receipt of real, effective and committed support from his father and that there are elements of dependency over and above normal emotional ties with both his mother, for whom he has provided care and his father, given the age of the latter and the ongoing regular communication and visits to the Appellant in Nepal. Thus article 8(1) of ECHR is engaged.
27. Applying *Ghising* (family life - adults - Gurkha policy) Nepal [2012] UKUT where Article 8 is engaged and, but for the historic wrong, the Appellant would have been settled in the UK long ago, this should ordinarily determine the proportionality assessment in the appellant's favour, unless there are matters over and above the public interest in maintaining a firm immigration policy. There are none in this case. The Sponsor and his wife have been at all times lawfully resident in the United Kingdom. I therefore allow this appeal on the basis that to deny the Appellant leave to enter is a disproportionate interference with his and his parents right to family life, protected by Article 8.

### **Notice of decision**

28. For the reasons set out above, I set aside the decision of the First tier Tribunal and substitute a decision allowing the appeal.

Rebecca Chapman

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

6 November 2023