



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM** 002799  
**CHAMBER**

Case No: UI-2023-

First-Tier Tribunal No: HU/58192/2022  
LH/01004/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 18<sup>th</sup> March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**LEKNATH LIMBU**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Ms N Namanj, Counsel, instructed by Howe and Co, Solicitors.  
For the Respondent: Ms Hannah Gilmour, Senior Home Officer Presenting Officer.

Heard at Field House on 22<sup>nd</sup> September 2023

**DECISION AND REASONS**

Introduction

1. The appellant is Nepalese. His date of birth is given as 20 June 1978 by his mother but the appellant in his statement refers to 23 June 1976. He states there was no system of registration in place. He has however used the date given by his mother. Nothing however turns on precise date.
2. On the 23rd of March 2022 he applied for entry clearance as the adult dependent child of his mother. I refer to her hereinafter as 'the sponsor'. The sponsor is a widow. His deceased father was a former Gurkha soldier.
3. His application was refused on 21 September 2022. The respondent considered it under paragraph EC-DR1.1. of appendix FM of the immigration rules. This includes eligibility requirements which state the applicant requires long-term personal care because of age, illness or disability. He had indicated no disability or inability to care for himself.

4. The respondent stated discretionary arrangements in place for the adult children of Gurkha soldiers do not apply to the children of widow .Furthermore, applicants must be between 18 and 30 years of age.
5. The respondent went on to consider article 8. The decision said he had not demonstrated family life over and above the norm between adult child and parent. Reference was made to Ghising [2013]UKUT 00567.It held that where article 8 is engaged and the applicant would have settled a long time ago but for a historic wrong that would normally determine of proportionality. Here, the respondent did not accept family life was engaged. If it were, that did not outweigh the proportionality assessment.

#### The First tier Tribunal

6. His appeal was heard by First-tier Tribunal Judge G Richardson on 12 May 2023. He was represented by counsel and there was a presenting officer . The determination records the background :his late father served in the Brigade of Gurkhas from 1964 to 1980 and applied for settlement in 2009.He did not travel until 15 April 2011. He returned to Nepal on 14 May 2011. He died on 31 December 2012 .
7. His sponsor applied for entry clearance which was granted from 6 December 2018. The sponsor has two children, the appellant and a daughter. Her daughter is married and lives in the United Kingdom.
8. The application stated the appellant is unmarried, lives alone and is unemployed. The sponsor said she provides him with financial assistance and he is able to access her widow's pension via an ATM card. She also sends him remittances and is in daily contact.
9. The judge saw the determinative issue was whether family life existed between the appellant and his sponsor. This was to be considered when she left for the United Kingdom and whether it has continued.
- 10.The judge considered the evidence presented. The sponsor had a monthly income of £1168.98 made up of Pension Credit, Housing Benefit and a Gurkha Widow's Pension. There was evidence of money transfers ranging from £100-£220 per month from 29 January 2021 to 27 March 2023. There was no evidence of earlier transfers. The judge also was provided with a series of online contacts but it was not clear what period of time these related to. There was no documentary evidence of the appellant using the ATM card referred to.
- 11.The judge noted the appellant's passport indicated a passport was previously issued on 5 March 2014 and was now recorded as lost. The judge said there was no explanation as to why he had obtained this passport except it suggested he intended to travel outside Nepal.
- 12.The judge accepted that the sponsor had been back to Nepal in 2019, 2022 and 2023. The evidence of financial assistance was fairly recent and there was limited evidence of communication. The judge commented on the delay in the application being made.

13. The judge summarised the findings at para 20 on the determination, namely, that the appellant at that stage 46 years of age and there was little evidence of dependency upon his sponsor. The judge was not satisfied the relationship went beyond the normal emotional ties between adult child and parent. The judge concluded family life did not exist. Consequently, he could not benefit from any discretionary arrangements and there were no exceptional circumstances. The appeal was dismissed.

#### The grant.

14. Permission to appeal to the Upper Tribunal was given by First-tier Tribunal Judge Parkes on 21 July 2023. It referred to the application which suggested the judge misdirected themselves in relation to article 8, referring only to dependency rather than support .

#### The hearing

15. Ms Gilmour confirmed there was no rule 24 response.

16. Ms NNamanj questioned the findings in relation to support and dependency. The appellant had lived with the sponsor until 2018. She said the appellant continued to reside in the family home. The sponsor had given him her ATM card. The sponsor had returned to Nepal on three occasions. She suggested if I found an error of law then the matter should be remitted for a de novo hearing.

17. In response, Ms Gilmour the judge had correctly set out the issues at paragraph 12. This was whether family life existed between the appellant and his sponsor when she left for the United Kingdom and whether it continues to exist. The judge had referred to the three visits by the sponsor and had pointed out the evidence of financial support was limited. She acknowledged the judge did not say there was no financial assistance but the evidence was recent and did not indicate withdrawals from the ATM machine. Regarding frequency of communication, this was a matter for the judge . I was referred to paragraph 20 of the determination and the lack of evidence presented. She agreed that if I found an error of law then the matter should be remitted back to the first-tier Tribunal.

18. In reply, Ms NNamanj accepted the judge at paragraph 12 had identified the issues arising. She submitted that the fact the appellant was a child of a former Gurkha was a relevant consideration.

#### Consideration

19. I do not see any material error of law demonstrated. Both representatives are agreed that the judge identified the issues to be determined at paragraph 12. Thereafter, it was a matter for the judge to assess the evidence. The judge deals with this at paragraph 17 to 20.

20. The judge concluded that article 8 was not engaged. I see no error on the part of the judge. The judge had referred to several relevant factors. The money transfers referred to were close to the time of application.

However, the sponsor had been in the United Kingdom since December 2018. The judge found no evidence that he had used the sponsor's ATM card. Had it been used this could have been evidenced. Furthermore, the evidence of contact was limited. The judge referred to the application not having been made until March 2022 whereas the sponsor came to the United Kingdom in December 2018. The refusal letter and the judge stated any possible discretionary arrangements did not apply until it was first established article 8 was engaged. There was no argument to the contrary.

Decision.

No material error has been demonstrated in the decision of First-tier Tribunal Judge G Richardson. Consequently, that decision dismissing the appeal shall stand.

Francis J Farrelly  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Date: 20/12/2023