



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004150

First-tier Tribunal No: HU/53437/2021
IA/14113/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 January 2024**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SAPNA KHAN
(no anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, instructed by Everest Law Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 12 January 2024

DECISION AND REASONS

1. The appellant is a citizen of Nepal, born on 29 July 1974. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance.
2. The appellant applied for entry clearance on 2 December 2020 to settle in the UK as the adult dependant child of her mother, the widow of a former ex-Gurkha soldier

who had been issued a settlement visa in May 2016 and who had arrived in the UK shortly thereafter in June 2016. The respondent refused the application in a decision dated 22 February 2021.

3. In refusing the application, the respondent noted that the appellant's father had died on 13 February 2015, prior to her mother being granted settlement. The respondent noted that the discretionary arrangements in place for adult children of a Gurkha discharged prior to 1 July 1997 did not apply to the children of widows and that the appellant was above the age limit for the purposes of the policy in any event, and considered that she did not therefore meet the eligibility requirements for adult dependent children of former Gurkhas as set out in the discretionary policy. The respondent considered further that the appellant did not meet the requirements of paragraph EC-DR.1.1 of Appendix FM of the immigration rules and went on to consider Article 8 of the ECHR outside the immigration rules. The respondent noted that the appellant was 46 years of age at the date of her application and was not satisfied that there was an established family life between herself and her mother such as to engage Article 8. The respondent considered that in any event the decision to refuse the application was proportionate and did not breach the appellant's Article 8 human rights.

4. The appellant appealed against that decision. Her appeal initially came before First-tier Tribunal Judge Hamilton on 4 November 2022. At that hearing, the Home Office Presenting Officer applied for permission to rely upon the decision of First-tier Tribunal Judge Head who had allowed the appeal of the appellant's brother, Min Bahadur Khan, on 17 March 2021, following the refusal of his application for entry clearance which he had previously made on the same basis as the appellant. The decision was relied upon by the respondent as it revealed an inconsistency in the evidence, in that Min Bahadur had claimed that all his siblings were married, whereas the appellant's evidence in her application was that she had never been married. The appeal was adjourned in order to provide the appellant with an opportunity to address that matter and directions were made for further evidence to be filed and served.

5. The respondent then served a supplementary appeal bundle containing Judge Head's decision and the skeleton argument and witness statements from Min Bahadur Khan and the sponsor relied upon in Min Bahadur Khan's appeal. The appellant, in turn served four supplementary bundles which included further documentary evidence together with supplementary witness statements from the sponsor and Min Bahadur Khan and statements from Madan Kumar Rana, Kul Bahadur Ale and Deepak Maskey.

6. The appellant's appeal was then re-listed and came before First-tier Tribunal Judge Khan on 21 February 2023. The respondent was not represented before Judge Khan. By that time the appellant was 47 years of age. The judge noted that the appeal was pursued only on Article 8 grounds, it having been accepted that the policy did not apply in the appellant's circumstances. The judge noted that the appellant claimed to have five siblings who had lived together with her most of the time in the house that belonged to her mother and that her brother Min Bahadur had been granted settlement in the UK following his successful appeal and had arrived in the UK in September 2021. The judge heard from the sponsor and four other witnesses, Min Bahadur Khan, Madan Kumar Rana, Kul Bahadur Ale and Deepak Maskey, the latter of whom simply confirmed that he had read the relevant witness statements to the appellant, sponsor and witnesses in Nepalese and that they had confirmed the statements as true.

7. Judge Khan noted that the evidence of the appellant, sponsor and Min Bahadur Khan in their statements for the current appeal before her was that neither the appellant nor any of her siblings in Nepal were married. She noted that the appellant was claiming to have lived at the family home owned by her mother her entire life and that the sponsor was claiming that all her children had lived with her after they were adults before she left Nepal. Judge Khan noted that the evidence given in the appeal of Min Bahadur Khan was, however, entirely different, with the sponsor claiming at that time that her other children led separate lives in Nepal and had moved away following their marriages and that Min Bahadur Khan was living alone in Nepal, and with Min Bahadur Khan claiming that his siblings were all married and living independent lives. That evidence was confirmed in the skeleton argument for Min Bahadur Khan's appeal.

8. Judge Khan noted that, in her supplementary witness statement provided for the current appeal hearing, the sponsor was claiming not to have remembered giving that statement in Min Bahadur Khan's appeal and was denying having said that her children in Nepal were all married. She claimed that Madan Kumar Rana, a shopkeeper in Aldershot whom she knew, had helped her with the application for Min Bahadur and had accompanied her to the solicitor's office for her appointment and had explained to her what was in the statement but that she had not concentrated on what he was saying and that none of her children were married although the appellant had a boyfriend at the time. Judge Khan noted that Min Bahadur's evidence in his supplementary statement for the appellant's appeal also claimed that Mr Rana had helped him and had read his statement back to him but that he had not realised it stated that his siblings were married and that he did not know what 'married' meant. The judge heard from Mr Rana who confirmed that he had accompanied the sponsor to the solicitors' office in relation to Min Bahadur's appeal and explained that he had read the statements to the sponsor and Min Bahadur in English and had summarised what said in Nepalese but did not use the actual word for marriage.

9. The judge did not find the witnesses to be credible and found their explanations to lack credibility. As for the evidence of Kul Bahadur Ale who was claiming to know the family well, to have met with the appellant in Nepal and to be able to confirm that she was not married and was living in her parents' home, the judge did not accept that he was as close to the family as claimed and did not accept that he had sufficient knowledge of the appellant to be able to provide independent confirmation that she was not married. The judge did not accept that the statements of the sponsor and Min Bahadur prepared for Min Bahadur's appeal had been wrongly translated and she considered that those statements set out the reality of the appellant's and siblings' lives. She therefore rejected the claim that the appellant was single and living in the sponsor's home and did not accept that there was family life between the appellant and sponsor for the purposes of Article 8, concluding that the appellant was married and living an independent life. She accordingly dismissed the appeal.

10. The appellant sought permission to appeal to the Upper Tribunal on four grounds: firstly, that the judge rejected Mr Ale's credibility without any evidential basis; secondly, that there was unfairness in the judge's approach to and rejection of Mr Ale's evidence; thirdly, that the judge erred in her assessment of Mr Rana's evidence; and fourthly, that the judge erred in her rejection of the evidence of the sponsor and Min Bahadur.

11. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on a renewed application.

12.The matter then came before me and both parties made submissions. Those submissions are addressed in the discussion below.

Discussion

13.The appellant's grounds make challenges to each of the witnesses' evidence in turn but fail adequately to address the wider picture which the judge was bound to consider in the light of the significantly different evidence before her to that which had been presented in the appeal of Min Bahadur.

14.The case presented for Min Bahadur when he made his application to join the sponsor in the UK was that he was the sole sibling who remained single and living in the family home, and that his other siblings including the appellant had all married, moved out and led independent lives, such that he was living alone and was particularly dependent upon the sponsor both financially and emotionally. It was on that basis that his appeal succeeded before Judge Head. However the case presented to Judge Khan for the appellant's appeal was that she was unmarried and continued living in the family home and that her siblings were, likewise, unmarried and were mostly also living in the family home or at least based there. Clearly that was a very different scenario to the one presented to Judge Head and it was therefore incumbent upon Judge Khan to assess the reasons and explanations for the varying evidence and to form a clear picture of the family's genuine circumstances in order to ascertain if family life did indeed exist between the appellant and her sponsor as claimed, rather than her being a married woman with her own independent life.

15.It was against that background that the judge undertook a detailed and careful assessment of the evidence before her. She addressed the evidence of each witness in turn and provided detailed and cogent reasons why she did not accept the explanation for the change in the accounts provided by the sponsor and Min Bahadur as to the family circumstances. The grounds seek to pick out individual aspects of the evidence of the witnesses and seek to argue that the judge erred by finding those particular aspects to be inconsistent, such as the evidence of whether the appellant had had a boyfriend in the past or whether or not she had been employed or sought employment, and whether Min Bahadur understood the word for marriage. However taken as a whole the judge was perfectly entitled to conclude that the explanations offered for the significant contradictions in the evidence were not credible or reliable. Mr Balroop criticised the judge's adverse findings about Mr Rana's credibility on the basis that it was not him who actually drafted the statements for Min Bahadur's appeal. However, the point made by the judge was that Mr Rana had failed to give a consistent, credible and reliable explanation as to why he was now distancing himself from his previous confirmation that he had read the statements to the sponsor and Min Bahadur in Nepalese. As for the challenge to the findings on the evidence of Kul Bahadur Ale, the judge was perfectly entitled to consider that Mr Ale's evidence did not demonstrate as close and full a knowledge about the appellant as he claimed. The judge was not bound to accept his claim that the appellant was unmarried, as the grounds appear to suggest, but she was entitled to assess his evidence in the round and accord it the weight that she did.

16.Accordingly I consider there to be no merit in the grounds which are essentially little more than a disagreement with Judge Khan's observations and findings on the evidence. The judge undertook a full and detailed assessment of all the evidence, took into account all relevant matters and provided clear and cogent reasons for making the adverse findings that she did. She was entitled to accord the weight that she did to the evidence of the witnesses and to make the adverse findings that she did. The

conclusions that she reached and the decision made were fully and properly open to her on the evidence before her. I find no errors of law in her decision and I uphold the decision.

Notice of Decision

17. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 January
2024