



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

Case No: UI-2023-004557  
First-tier Tribunal No: HU/01906/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 11<sup>th</sup> of January 2024

**Before**  
**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**IKHBAYAR TSEND AYUSH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Symes, Counsel, Direct Access  
For the Respondent: Mr D Clarke, Senior Presenting Officer

**Heard at Field House on 20 December 2023**

**DECISION AND REASONS**

**Introduction**

1. The appellant appeals a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Hamilton) sent to the parties on 11 August 2023.
2. The underlying appeal is concerned with the respondent's refusal to grant the appellant leave to remain on human rights (article 8 ECHR) grounds. The decision is dated 28 July 2022.
3. The appellant appeals with the permission of Judge of the First-tier Tribunal Monaghan whose decision is dated 5 October 2023.
4. Both the appellant and his mother attended the hearing held at Field House on 20 December 2023.

5. At the outset I thank Mr Symes and Mr Clarke for their concise and informed submissions.

### **Background**

6. The appellant is a national of Mongolia and presently aged 24.
7. His mother left Mongolia in 2007 and initially entered the United Kingdom as a visitor. She was granted leave to remain as a student from January 2008 until August 2013. She was ill for a significant period before her diagnosis in 2013 with a serious complication including cavity and secondary bronchitis following tuberculosis. Consequent to her health problems she was granted a two-year period of leave to remain in this country and was then subsequently granted leave to remain as an unmarried partner. The relationship later broke down after she acquired ten years' lawful residence in 2018. She was granted indefinite leave to remain based upon continuous residence.
8. The appellant's father is a Ukrainian national. He abandoned the family when the appellant was aged 2.
9. When his mother left Mongolia, the appellant resided with his maternal grandmother and uncle. He travelled to the United Kingdom and entered as a visitor in 2012, 2015 and finally in February 2017. Following his final entry, he overstayed.
10. On 13 January 2022 the appellant applied for leave to remain on human rights grounds relying upon his mother's health and their close dependency upon each other.
11. The respondent refused the application by a decision dated 28 July 2022 reasoning, *inter alia*, that the appellant had lived in Mongolia until the age of 17 and so retained social and cultural ties in that country. He had not shown himself unable to find accommodation, employment or a suitable course of study upon return to Mongolia. His mother could source alternative support and care from the NHS or privately.

### **Decision of the First-tier Tribunal**

12. The appeal was heard by the Judge sitting at Hatton Cross. Both the appellant and his mother gave evidence.
13. The core of the appellant's case was that:
  - he has established a family life with his mother;
  - his return to Mongolia would be unjustifiably harsh because of his ongoing family life with his mother;
  - he had suffered abuse and discrimination in Mongolia because of his mixed ethnicity;

- he has poor mental health;
- his mother continues to suffer from the sequelae of tuberculosis and stomach problems.

14. It is unfortunate that the Judge's decision suffers from a lack of adequate proof-reading.

15. The Judge accepted that the appellant's mother had ongoing health issues but concluded on this issue:

"27. ... However, looking at the evidence overall I do [not] find there was sufficiently cogent evidence so (sic) show she needs assistance with day-to-day activities or that she was unable to look after herself. I also do not find that she would be unable to continue to work if the appellant was unable to support her. There was no evidence to show that if she did need to take occasional days off because of her health, she would be unable to arrange alternative cover."

16. I am satisfied that a 'not' is missing in the first sentence cited above, but its addition is the only coherent way of understanding the Judge's reasoning.

17. As to the appellant's concerns in respect of racial discrimination the Judge concluded:

"29. The appellant claims that he was bullied at school because of his Ukrainian heritage. The background evidence shows that racism and extreme nationalism can be a problem in Mongolia. I therefore find it likely he has experienced some level of bullying and discrimination in Mongolia. However, I do not consider the limited information in the background evidence provided is consistent with the high level of relentless discrimination described by the appellant in his statement. The appellant claimed that if he returned to Mongolia he would only be able to get work in building construction 'because of the way I look' (AB/20/12). I am unclear why he believed people in the construction industry would not discriminate against him. However, his oral evidence regarding this issue was that he believed he would only be able to obtain menial jobs. He also claimed that even if he did work in the construction industry, he would not earn enough money to survive. However, the background evidence was limited and insufficiently cogent to show the level of discrimination was so high that the appellant would be unable to live and work in Mongolia or earn enough to support himself. The appellant also says he has been supported financially by his mother. As his mother remains in full-time work, there is no reason why the appellant could not continue to receive some financial support from his mother. I do not however find there was sufficiently cogent evidence to show the appellant would be unable to support himself without his mother's financial help. I note that In (sic) her oral evidence, his mother confirmed

that her mother (the appellant's grandmother) who lives in Mongolia was able to support herself from her pension.

30. The appellant also claims that he would not have family support in Mongolia because of abuse he suffered from one of his uncles. However, the written statements provided by the appellant's two other uncles and his grandmother all show that they are supportive of him. I find it likely they would be able to offer the appellant practical, if not financial assistance. They are also likely to have social networks in Mongolia that the appellant would be able to take advantage of. Furthermore, no adequate explanation was provided as to why the appellant would be unable to live with one of his other uncles if he returned to Mongolia; at least in the short-term while he found a job and obtained his own accommodation."

18. The Judge found that the appellant could not succeed under paragraph 276ADE(1) of the Immigration Rules.

19. The Judge turned to article 8 outside of the Rules and concluded that whilst the appellant was dependent upon his mother for accommodation and finances, no dependency flowed from his mother to him and vice versa:

"39. The appellant and his mother will have established a family life within the meaning of article 8 when they lived together in Mongolia. They have lived in different countries since she came to the UK in 2013. However, I find that, apart from the time that she was hospitalised, it is likely she has been supporting him financially and they have maintained a relationship by indirect contact and visits. I am satisfied that they (sic) their article 8 family life continued during this time. When the appellant came to the UK in 2017, he was 17 years old and still a child. As I understand it, he says that since then, he has been living with his mother and she has been supporting him financially. The respondent's representative did not suggest otherwise. The appellant's social activities and the unregulated behaviour that has got him into trouble with the police twice, suggests he has developed a life in the UK independent of his mother. Also, I have not found that the appellant's mother relies on his assistance in order to undertake her work and day-to-day activities. I do not find there was evidence showing the love and affection they have for one mother (sic) goes beyond the normal love and affection one would expect exist[s] between a mother and her adult son. However, I do accept that the fact the appellant is living with her means it is likely he provides practical help when asked. The appellant remains dependent on his mother for accommodation and money. For this reason only, I am satisfied they still have an established article 8 family life. I have not found emotional dependency and the appellant's mother could continue supporting him financially if he returned to Mongolia. Nevertheless, I am just about persuaded that requiring the appellant to return to Mongolia would disrupt their relationship sufficiently to engage their article 8 family life rights."

20. Having considered section 117B of the Nationality, Immigration and Asylum Act 2002 the Judge dismissed the appellant's human rights appeal outside of the Rules.

### **Grounds of Appeal**

21. The appellant relies upon the careful and concise grounds drafted by Mr Symes, who represented him before the First-tier Tribunal.
22. Permission to appeal was granted by Judge of the First-tier Tribunal Monaghan on grounds 2 to 4 alone.
23. Ground 2 at its core asserts that it was irrational for the Judge conclude that the appellant's mother was not emotionally dependent upon her son.
24. Ground 3 challenges as irrational the finding by the Judge that the appellant's mother could visit her son in Mongolia.
25. The fourth ground is identified at paragraph 9 of the grounds of appeal:

"The FTT failed to give adequate reasons for its conclusion §29-30 that the available country evidence was not sufficiently cogent to establish that A would face discrimination in Mongolia given his mixed Mongolian/Ukrainian parentage. The Digital Nomads travel site stated that 'Mongolia has seen a recent rise in ethnically-motivated violence. Ultra-nationalist Mongolian groups single out individuals with Caucasian, African or Chinese features just because of the way they look.' The FTT fails to explain how it is that having extended family in Mongolia would protect A from this climate of violence".

### **Analysis**

#### *Consideration of emotional dependency*

26. The appellant contends that the Judge's conclusion as to his mother not being emotionally dependent upon him "flies in the face" of her evidence.
27. Mr Symes submitted that the Judge failed to properly assess the mother's evidence as detailed at paragraph 24 of her witness statement:

"24. I work as a self-employed cleaner. I have worked for different houses for more than 10 years and have managed this around my condition because I need money to live but it has been very hard. My son sometimes helps me with this job because I cannot do it all myself due to my condition, especially when I fall down very ill. Without him I am not able to manage. Without his support I fear I will not be able to keep my job."

28. The challenge advanced is a rationality challenge, which is a high test: *R (Johnson) v. Secretary of State for Work and Pensions* [2020] EWCA Civ 778, at [107].
29. I have carefully read paragraph 24, and the witness statement in its entirety. It is primarily focused upon the physical support offered by her son, but it can properly be read as identifying care and compassion, which underpins emotional support. However, it is clear the Judge was alive to the mother's concerns and considered her personal circumstances. His conclusions that she does not need assistance with day-to-day activities, that she can look after herself and that she can continue to be employed in the absence of her son are not challenged. These are foundations to the overall assessment as to emotional dependency. The mother's evidence does not detail that she would suffer a significant lack of self-control and feel great discomfort if she is not residing with the appellant. The appellant's absence will not adversely impact upon her ability to look after herself and continue her employment.
30. I am satisfied that cogent, lawful reasons were given for concluding that the love and affection between mother and son did not go beyond the norm. Whilst another judge considering the evidence may have reached a different conclusion, it cannot be said that the decision reached was irrational. The high threshold is not close to being met.
31. This ground of appeal is dismissed.

*Irrationality of Judge concluding that the appellant's mother could visit him in Mongolia*

32. The appellant states that the Judge erred by placing significant weight on his ability to remain in contact with his mother by her visiting him in Mongolia. This conclusion is said to fail to take account of the evidence as to his mother's illness, with adequate medical care not being available to her if she were to return to Mongolia.
33. I observe [43] of the decision in its entirety:

"43. Given the health difficulties the appellant's mother lives with, it is likely she finds it extremely helpful to have him available to assist her. I accept that if he is not around it is likely to be inconvenient and have an adverse impact on her quality of life. However, I do not find the evidence shows that the appellant's mother is physically or emotionally dependent on the appellant. It is the appellant who is dependent financially on his mother. However, she can continue to support him financially if he returns to Mongolia. They can maintain contact by visits and modern means of communication, as they have done in the past."
34. The starting point is that the only dependency identified is that the appellant is financially dependent on his mother, which can be replicated upon his return to Mongolia by remittances. Mr Symes accepted that there was no challenge to the finding that mother and adult son can reasonably

maintain contact by modern means of communication. His position was that the Judge failed to adequately address the emotional 'angle'.

35. However, at [39] and again at [43] the Judge concluded that there was no emotional dependency between mother and son. At [43] the Judge correctly identified that they could remain in contact; the appellant's leaving this country was not bringing the relationship to a sudden end. Any error as to the mother's ability to travel to Mongolia is not material in this respect, as they can remain in contact by modern means of communication.
36. This ground of appeal is dismissed.

### *Discrimination*

37. The appellant contends that the Judge failed to give adequate reasons for his conclusion at [29]-[30] of the decision that the country evidence relied upon was not sufficiently cogent to establish that the appellant would face discrimination in Mongolia consequent to his mixed heritage.
38. Mr Symes noted that risk of discrimination set off by physical appearance was placed front and centre of the appellant's case before the First-tier Tribunal.
39. The primary document relied upon by Mr Symes was an undated document issued by a travel agency, World Nomads. I have read the document in its entirety and for this decision I note the section entitled 'racism in Mongolia':

"Mongolia has seen a recent rise in ethnically motivated violence. Ultra-nationalist Mongolian groups single out individuals with Caucasian, African or Chinese features just because of the way they look.

Xenophobic and nationalist groups are most likely to target you if you're a white, black or ethnic-Chinese man with a Mongolian woman.

If you are a single male travelling alone, be very aware of this dynamic and try not to flirt too much at bars or in clubs. There has been a string of racially inspired attacks since the spring of 2010 against inter-racial couples ranging from deliberate, planned attacks to assaults of passion at bars.

Don't travel by yourself at night. Keep a low profile at all times (as best you can if you're Caucasian, African or Chinese) and simply enjoy yourself. Getting into political arguments with locals at bars or acting in an antagonistic manner is sure to have consequences you don't want."

40. I observe another document addressing discrimination placed in the appellant's bundle, an article from DW (Deutsche Welle) titled "Rampant racism a growing problem in Mongolia". The article, published in April 2012, mainly recounts observations made by one member of an ultra-

nationalist organisation and an owner of a Chinese restaurant who has been subject to threats relating to protection money.

41. I have read the remaining objective evidence, identified in the appellant's bundle as 'research/media reports'.
42. The Judge accepted background evidence as detailing that racism and extreme nationalism "can be a problem" in Mongolia and accepted that the appellant has experienced some level of bullying and discrimination. I am satisfied that the Judge gave cogent reasons for concluding that the evidence relied upon was limited and did not support the high level of relentless discrimination described by the appellant. The evidence is generalised in nature, much of it is of some age and is reasonably considered to be limited.
43. The appellant contends that the First-tier Tribunal failed to explain how having extended family in Mongolia would protect him from the climate of violence. This submission fails to engage with the judicial finding that the background evidence relied upon was not sufficiently cogent to show that the appellant would be unable to live and work in Mongolia and support himself because of discrimination.
44. The Judge considered the evidence in the round, both the appellant's evidence and corroborative documents and gave lawful reasons for rejecting the appellant's case.
45. This ground of appeal is dismissed.

### **Notice of Decision**

46. The decision of the First-tier Tribunal sent to the parties on 11 August 2023 is not subject to material error of law and so stands.
47. The appeal is dismissed.

*D O'Callaghan*  
**Judge of the Upper Tribunal**  
Immigration and Asylum Chamber

**4 January 2024**