



**Upper Tribunal
(Immigration and Asylum Chamber)**

Case No: UI-2024-000061
First-tier Tribunal No: HU/54664/2023

THE IMMIGRATION ACTS

Decisions and Reasons issued

19th February 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr DAMBAR SINGH SAMBAHAMPHE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr D Shrestha, Counsel
(instructed by Gurkha Solicitors Ltd)

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at FIELD HOUSE on 9 February 2024

DECISION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Boyes on 2 January 2024, against the decision of First-tier Tribunal Judge Courtney who had dismissed the appeal of the Appellant against the refusal

of his Article 8 ECHR human rights claim. The decision and reasons was promulgated on or about 25 October 2023.

2. The Appellant is a national of Nepal, born on 26 December 1983, i.e., 39 years of age at the date of the hearing. He had applied for entry clearance as the dependent relative of his mother Mrs Man Maya Limbu, the widow of the late Mr Meherman Limbu who had served in the Brigade of Gurkhas until January 1970. He died on 29 March 2009. Mrs Limbu entered the United Kingdom on 16 March 2015 with her youngest son Sunul Subba. The Appellant's entry clearance application was refused on 26 February 2023 and Notice of Appeal was lodged on 4 April 2023.
3. Judge Courtney found that the Appellant's application could not succeed under the Home Office's policy for adult children of former Gurkhas. Nor did he qualify for entry clearance under the Immigration Rules as an adult dependent relative. Those findings were not challenged.
4. As to the Appellant's claim under Article 8 ECHR outside the Immigration Rules, after reviewing the authorities, Judge Courtney found that the Appellant and his mother and brother Sunil had no protected family life for Article 8 ECHR purposes while the Appellant lived and worked independently in Saudi Arabia for seven years between February 2015 and June 2022. The Appellant had gone to Saudi Arabia some five weeks before Mrs Limbu migrated to the United Kingdom. There was no evidence of financial support or communication during the Appellant's time in Saudi Arabia. There was no evidence that family life had re-formed subsequently or that more than normal emotional ties existed between the Appellant and his mother and brother in the United Kingdom. The judge further found that there were no compelling circumstances sufficient to establish a good claim for leave to enter outside the Immigration Rules.
5. Judge Boyes granted permission to appeal on the grounds that it was arguable that Judge Courtney had erred when finding that Article 8 ECHR was not engaged.

Submissions

6. Mr Shrestha for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal. The appeal had been dismissed because the Appellant had worked in Saudi Arabia for seven years. But the Appellant had only gone to work in Saudi Arabia because there was no work available in Nepal. That reasoning was unsustainable. Judge Courtney had approached the issue of family life without reference to Ghising (family life - adults - Gurkha policy) [2012] EWCA Civ 17. The decision was wrong and should be set aside.
7. Mr Avery for the Respondent submitted that the Appellant's grounds of appeal had not been made out and no error of law had been shown. The complaints advanced amounted to no more than disagreement with findings open to the judge on the evidence, which the judge had addressed. There was no reason to interfere with the judge's decision, which should stand
8. Mr Shrestha wished to add nothing more by way of reply.

No material error of law finding

9. At the conclusion of submissions the tribunal indicated that it found no material error of law. The tribunal reserved its reasoned decision, which now follows. The tribunal rejects the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision are misconceived and are based on a failure to read Judge Courtney's decision and to set the relevant facts into their proper context. Indeed, it has to be said that it is far from easy to see why permission to appeal was granted. The family life claim was on its face weak.
10. That context of the entry clearance application was plain. The Appellant was a 39 year old man who had lived independently from his mother since 2015. It was only to be expected that he would seek to support himself, if necessary by finding work abroad. There was no evidence that he was in poor health or lacked mental capacity.
11. Contrary to Mr Shrestha's unsupported submission, the experienced judge directed herself with specific reference

to the leading authorities (see [12] and [13] of the decision), including Ghising (above) and did not take a restrictive approach. The judge had an open mind, and expressly stated that she recognised that in certain instances family life could revive after an absence. The judge did *not* find that there was no family life. The judge found that there was no “protected” Article 8 ECHR family life, i.e., no special emotional or economic bonds between the adult Appellant in Nepal and his mother and brother in the United Kingdom. Those findings were reached following a careful survey and analysis of the evidence: see [14] to [24]. They were not in the least surprising and were open to the judge.

12. As Mr Avery submitted, the grounds advanced on the Appellant’s behalf were at best an expression of disagreement. The tribunal finds that there were no material errors of law in the decision challenged. The onwards appeal is dismissed.

Notice of decision

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 15 February 2024
Deputy Upper Tribunal Judge Manuell