Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09306/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th September 2017	**On 12th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

ENTRY CLEARANCE OFFICER – NEW DELHI

Appellant

and

ZEENA LIMBU
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer
For the Respondent: Mr J Kharid, Counsel

DECISION AND REASONS

1. This is an appeal by the Entry Clearance Officer in New Delhi against the decision of First-tier Tribunal Judge Gribble in which she allowed the Appellant's appeal against refusal of entry clearance on private and family life grounds.

2. This case is somewhat unusual. The Appellant's father was a Ghurkha soldier who had served in the British Army but had not been allowed to settle in the United Kingdom. The unusual aspect of the case is that he never settled or resided in the United Kingdom. His wife, however, was granted leave to do so. Tragically, her husband (the appellant's father) was later killed whilst working in Afghanistan.

3. The Appellant's mother, to whom I shall refer as "the Sponsor", has four children. Only the Appellant remains in Nepal. Her siblings have since emigrated to Hong Kong and I think in one case to the United States of America.

4. The judge found that but for the historic injustice in preventing the Appellant's late father from settling in the United Kingdom she would, as his youngest child, by now having joined him and been settled in the United Kingdom. In conducting the proportionality exercise under Article 8, she attached very significant weight to this factor, concluding that it outweighed the public interest in maintaining firm immigration control in order to protect the economic wellbeing of the country. In doing so, she relied heavily upon the decision in **Ghising** [2013] UKUT 567 (IAC)**,** which in turn summarised earlier jurisprudence including that to be found in the case of **Gurung** [2013] EWCA Civ 8. The judge set out the entire head note of the case of **Ghising**. However, for present purposes it is necessary only to refer to paragraph (4):-

> Accordingly, where it is found that Article 8 is engaged and, but for the historic wrong, the Appellant would have been settled in the UK long ago, this will ordinarily determine the outcome of the Article 8 proportionality assessment in an Appellant's favour, where the matters relied on by the Secretary of State/ Entry Clearance Officer consists solely of the public interest in maintaining a firm immigration policy.

5. The first matter that the judge had to consider, and did consider at paragraphs 24 and 25 of her decision, was whether family life existed and whether the consequences of the decision were such as to engage the potential operation of Article 8. No criticism is made in the grounds of the reasons given by the judge for answering both these questions in the appellant's favour. Rather, the criticism contained within the first ground of appeal focuses entirely upon the Tribunal's analysis of the proportionality of the appellant's exclusion from the UK to which I now turn.

6. Firstly, it is said that the Tribunal attached insufficient weight to the Appellant's lack of facility in the English language. Secondly, it is said that it attached insufficient weight to the appellant's lack of self-sufficiency. However, these are both factors which in my judgement come under the more general heading of 'the public interest in maintaining firm immigration control'. To use the lexicon of Appendix FM of the Immigration Rules, they relate to what are known as the 'eligibility requirements'. However, as was made clear in the passage that I have

cited above from the decision in **Ghising**, something more than this is needed in order to outweigh the significant weight attaching to the historic injustice. Examples cited by the Tribunal in **Ghising** include an adverse immigration history and criminal behaviour. In my judgement, this equates to past conduct that would require refusal of the application under the 'suitability requirements' of Appendix FM of the Rules. It was not however suggested by the Entry Clearance Officer that the Appellant should be excluded from the United Kingdom on this basis. I therefore conclude that the first ground of appeal has not been made out.

7. Secondly, whilst I do not pretend fully to understand paragraphs 2 and 3 of the grounds, it appears to be suggested that as a result of the Appellant joining the Sponsor in the United Kingdom the Sponsor would receive a reduction in her Housing Benefit. Quite why such a potential consequence is said to add weight to the public interest in the appellant's continued exclusion from the UK is not explained. There appears in any event to have been no evidence before the First-tier Tribunal that that the appellant's admission to the UK would have such an impact upon her mother's state benefits. I cannot therefore see how it can be said to have been "irrational" for the judge to have left it out of account.

8. Thirdly, at paragraph 4 of the grounds, it is suggested that the Tribunal speculated (at paragraph 32) as to the Appellant's ability to be financially self-sufficient in the United Kingdom. However, I cannot find any such speculation, whether at paragraph 32 or elsewhere in the decision. On the contrary, the entire decision appears to be predicated upon the Appellant not being financially self-sufficient upon arrival in the United Kingdom.

9. Finally, in paragraph 5 of the grounds, it is argued that the Tribunal failed to have regard to the fact that the Sponsor chose to emigrate from Nepal to the United Kingdom in 2011 and that, accordingly, there was no obligation upon the Entry Clearance Officer to facilitate entry clearance for the appellant to join her mother when she was unable to meet the requirements of the Immigration Rules. The criticism here appears to be – albeit not made explicitly - that the Tribunal failed to have regard to the possibility of family life between the Appellant and her mother being enjoyed in Nepal. However, given that the judge's decision was based upon the premise that the 'historic injustice' outweighed what may otherwise have been the reasonableness of family life continuing in Nepal, I fail to see how this argument advances the respondent's case any further.

10. I therefore conclude that the Tribunal did not make an error of law, material or otherwise, in reaching its conclusion that the appeal should be allowed.

Notice of Decision

The appeal is dismissed

Signed Date: 11th September 2017

Deputy Upper Tribunal Judge Kelly