



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11926/2015

THE IMMIGRATION ACTS

Heard at: Field House
On 15 June 2017

Decision and Reasons Promulgated
On 28 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR DILRAJ GURUNG
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: No attendance
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nepal, born on 1 October 1988. He appeals with permission against the decision of First-tier Tribunal Judge Herlihy, promulgated on 13 September 2016, dismissing his appeal against the decision of the respondent to refuse to grant him entry clearance as an adult dependant relative of a person present and settled in the UK. His sponsor was his father, Mr Sitaram Gurung.
2. Notice of the hearing was sent to the appellant and his representative on record. However, no person attended the hearing. I consider that it is in the interests of justice to proceed with the hearing.

3. Judge Herlihy found that at the date of decision the appellant was 26 years old and was unmarried. The respondent refused his application on the basis that he was not financially and emotionally dependent on the sponsor [4.2]. The only evidence before her was the letter from the village development committee - VDC - stating that the appellant is totally dependent on his parents and the land ownership certificate confirming ownership of land by the sponsor in Nepal. There was however no 'objective evidence' of any financial support by the sponsor to the appellant.
4. Nor was it disputed that he had lived apart from his sponsor, having previously travelled to and been issued with a visa to work in Qatar. He had accordingly lived independently of the sponsor - [4.2].
5. She also found that there was no evidence that he was incapable of obtaining work, having worked in the past. He has adult siblings in Nepal and is not living alone without a family there.
6. In the circumstances she was not satisfied that he has established family life with his sponsor. He has spent his formative life in Nepal where many of his family members continue to live. He is 26 years old and has lived independently for some years apart from his parents, before returning to Nepal to submit his application.
7. On 18 April 2017, First-tier Tribunal Judge Baker stated that having regard to the grounds of appeal, the appellant claimed to have met all the terms of the applicable policy which had not been addressed. There was accordingly an arguable error of law in the Judge's assessment. It could not be said that the outcome would have been the same had the policy and the claims made by the appellant in his original grounds of appeal been considered in the light of the amendment of the policy, including in respect of those who are up to 30 years old at the date of their application, which the appellant claimed he was.
8. Despite the fact that notice of hearing was given to the appellant and his representative, neither his sponsor nor any other person has attended the hearing.
9. The appellant's application to settle in the UK was considered by the respondent in accordance with the Home Secretary's policy as outlined in Annex K(IDI Chapter 15 section 2A 13.2) as amended on 5 January 2015.
10. In his grounds, which are in the form of a narrative statement and which are signed by the appellant, he contends that the Judge "has not considered my appeal positively." He referred to the fact that the Judge decided two similar cases – his and another - at the same time. The Judge did not pay positive and judicial attention to the existing rules.
11. He stated that he was 26 years old at the time of the application. He was outside the UK when the application was made. He had not formed an independent family unit. He was financially and emotionally dependent on his parents. He has not been

apart from them for more than two years. He visited Qatar in 2013 because of financial problems. He tried to be independent by going abroad under the guidance of his parents and their support.

12. In his grounds he stated that he has enclosed proof of financial support from his UK parents for his daily living as well as fees for his high school education.
13. He asserted that he met the criteria in annex K relating to adult children of former Gurkhas. He submitted that if he does not meet the conditions under the Rules his claim is to be considered under Article 8.
14. Ms Ahmad submitted that the Judge has properly considered the appellant's appeal. The appellant had elected to have the appeal decided on the papers. Accordingly, no person attended the hearing then and there is no person who has attended his appeal before the Upper Tribunal either.

Assessment

15. In her decision, Judge Herlihy has set out the appellant's case. This included his employment in Qatar in 2012.
16. She had regard to Annex K, paragraph 9 (5) of the IDIs, Chapter 15, section 2A 13.2. In order for settlement to be granted to the adult child of a former Gurkha under the policy, various conditions must be met. The appellant must show that he is financially and emotionally dependent on the former Gurkha. In addition, he must show that he has not been living apart from the former Gurkha for more than two years at the date of application and has never lived apart from the sponsor for more than two years at a time unless this was by reason of education or something similar (such that the family unit was maintained, albeit the applicant lived away). Nor must he have formed an independent family unit.
17. At paragraph 2 the Judge had regard to the appellant's grounds. That included his claim that he was living at his parents' home as confirmed by the village development committee. There are very limited jobs available in Nepal.
18. The Judge noted that she has given careful consideration to all the documents before her together with Annex K and the IDIs, chapter 15. She did not have a respondent's bundle. Nor were there any statements or other evidence from the appellant setting out his history. The only evidence in support was that submitted with the notice of appeal.
19. The appellant contends in his grounds that he met the requirements under Annex K.
20. The Judge has considered the assertions and evidence. At [4.2] of the decision she noted that he was 26 years old and was unmarried. The only evidence before her was a letter from the VDC contending that he is totally dependent on his parents

and the land ownership certificate confirming ownership of land by the sponsor in Nepal.

21. There was no objective evidence of any financial support by the sponsor to the appellant. Nor was it disputed that he has lived apart from the sponsor, having travelled to and been issued with a visa to work in Qatar. Accordingly he had lived independently of his sponsor.
22. She also noted that there is no evidence that he is not capable of obtaining work. He has worked in the past. He has adult siblings in Nepal and is not living alone without family there.
23. Nor did the appellant establish that he enjoys family life with his sponsor [4.3]. He spent all of his formative life in Nepal with many of his family members who continue to live there.
24. She found that he has been living apart from the sponsor and his family for some time. It is clear that the family have been able to maintain their relationship with him without any difficulty, despite their being separated by a considerable distance. He has support as well as family members upon whom he can rely in Nepal.
25. The appellant in his grounds before the Upper Tribunal has contended that he did meet the relevant requirements under Annex K. He has sought to enclose proof of financial support from his UK parents for his daily living and fees for his high school education.
26. However, that evidence was not attached. In any event that evidence had not been made available to the First-tier Judge.
27. In summary the Judge found that the appellant is a 26 year old male who has previously travelled to Qatar for employment. He has been separated from his parents and was living independently for some years before returning to Nepal to submit his application – [4.3]. The Judge properly found that there was no objective evidence of any financial support from the sponsor. Nor was it disputed that he had lived apart from his sponsor, having travelled to Qatar in order to work as he has lived there independently of the sponsor.
28. In the circumstances, the finding that there was no family life between the appellant and his parents who came to the UK in March 2010 was sustainable on the evidence produced.
29. I find that the Judge has given proper reasons for her conclusions. They are neither irrational nor perverse.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any error on a point of law. The decision shall accordingly stand.

No anonymity direction is made.

Signed

Date: 27 June 2017

Deputy Upper Tribunal Judge C R Mailer