



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/02080/2015
HU/02081/2015
HU/02082/2015
HU/02083/2015
HU/02085/2015

THE IMMIGRATION ACTS

Heard at Field House
On 9 April 2018

Decision & Reasons Promulgated
On 27 April 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

BHUPENDRA LIMBU
GURUDEV LIMBU
HEMANT KUMAR LIMBU
PARBATI LIMBU
RABINDRA KUMAR LIMBU
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Nnamani, Counsel, instructed by Howe & Co Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Nepal and are siblings. In July 2015 the Entry Clearance Officer refused their applications for entry clearance as the dependent adult children of a veteran of the Brigade of Gurkhas of the British Army. Their

appeals were heard by Judge Andonian of the First-tier Tribunal (FtT). On 16 March 2017 he promulgated a decision dismissing all appeals. The appellants were granted leave to appeal the judge's decision. In a decision sent on 8 January 2018 I set aside the FtT's decision for material error of law. I directed that there be a further hearing at which the sponsor attended as a witness to explain and document his financial circumstances both at the time of leaving Nepal to come to the UK in April 2012 to settle, and subsequently.

2. At the resumed hearing I heard evidence from the sponsor, Mr Deoman Limbu, aged 71, and three of his friends, Mr Man Bahadur Limbu, Mr Rajendra Bahadur Limbu and Mr Meherman Limbu, each of whom had been soldiers who served with Mr Deoman Limbu and each of whom had provided a supplementary witness statement. The thrust of Mr Deoman Limbu's evidence was that despite two of his children obtaining Bachelors degrees, all five were still without jobs and remained dependent on him. He and his wife's income from pension benefits was approximately £1,300 a month, approximately £350-£400 a month of which goes on his children. A friend, Biswo Kumar Limbu, had lent him money to make a settlement application when he was in Nepal. Altogether he had borrowed approximately £4,000 to travel and settle in the United Kingdom. He speaks to his children every day on the phone. His wife suffers from a hearing impairment. He and his wife have been back to Nepal to visit their children three times - in 2014, 2015 and 2017. The evidence of his three friends was broadly consistent with his.
3. There was one area of evidence on which there was a considerable lack of clarity. In his witness statement Mr Deoman Limbu stated that as well as sending money by way of remittance he sent money through friends by hand, mostly because it is cheaper and easier. In his oral testimony, however, he said he never sent money through friends. His witnesses said they had taken money and gifts to the sponsor's children when they had visited. Ms Everett in her closing submissions did not seek to make much of this discrepancy and in my judgment she was right not to do so. It was apparent to me that the sponsor and his witnesses struggled to recollect precise details, the sponsor in particular, and that the most likely explanation for the apparent discrepancy lay in the fact that when visiting his children his friends saw the money they gave as being gifts from them and that within the network of ex-Gurkha soldiers there was a culture of helping each other financially and no clear dividing line always between lending and giving. Despite the discrepancies between the sponsor's written and oral evidence, I am satisfied on balance that (i) he did borrow approximately £4,000 from friends in order to settle in the UK with his wife; (ii) he and his wife live a very frugal life; and (iii) they have been supporting their children at the rate of approximately £350-400 a month since they came to the UK for settlement. A variable element of the money the sponsor provides for the support of his children is comprised of gifts or loans from his friends.
4. Ms Nnamani submitted that the remaining issue in this case was a narrow one - whether there was an existing family life between the sponsor and the appellants

within the meaning of Article 8(1): She submitted that the evidence demonstrated that there was, in that there was clear financial dependency and ongoing emotional dependency. Ms Everett said that notwithstanding the evidence regarding how monies are sent to the sponsor's children, she accepted that monies were going to them. The evidence was not entirely clear as to the precise accommodation circumstances of the appellants in Nepal but it appeared that the family had a small plot of land. As to why none of the appellants had married, the evidence was mixed, the sponsor saying that none of them wanted to marry. The cases of the appellants were not clearly distinguished from one another and overall their circumstances were insufficiently evidenced.

My assessment

5. I observe first of all that this case involves five appellants. That should always have been clear from the fact that all five applied for entry clearance and each received an individual refusal. However, for some reason the appeal forms for each of them only put the name of one of them – Gurudev. Despite this procedural failing it is entirely clear that appeals were intended to be lodged by all five and that was how the FtT judge approached the matter.
6. Both parties agree that the remaining issue in these appeals is a narrow one – whether there exists family life between the sponsor and his wife and the five appellants within the meaning of Article 8(1). The respondent accepts that the appellants have suffered an historic injustice.
7. Ms Everett submitted at one point that the cases of the five appellants were not sufficiently distinguished from each other. However, I concur with Ms Nnamani that their joint witness statement dated 14 February 2017, whose prime author is Bhupendra, contains specific details regarding the situation of each of them. This statement sets out that Bhupendra and Gurudev had left their studies to help in the fields. Hemant Kumar, Parbati and Rabindra Kumar continued their study until 2006 under Gurkha welfare support. Bhupendra was now taking a graphics design course. Hemant is currently studying. Parbati is pursuing a Bachelor degree in Business Studies, Rabindra is still in high school.
8. As regards financial dependency, I am satisfied that this has been established in the appellants' case. There are two aspects to this. First, as Ms Everett accepts, the sponsor has clearly been supporting the appellants by a combination of remittances and monies (in the form of gifts or otherwise) paid in person to them by friends of the sponsor when they visit. The remittance receipts submitted by the sponsor show payments being made over various dates from November 2013 to February 2018, which satisfies me that the financial dependency is ongoing. The other aspect concerns the economic circumstances of the appellants in Nepal. Ms Everett is right that the evidence is incomplete, but it is nevertheless sufficient to satisfy me (i) that their living circumstances are rudimentary; and (ii) none have obtained jobs. In

addition to the unemployed status verification letters, none of the appellants' witnesses who had visited the appellants described them as having employment.

9. As regards emotional dependency, the FtT judge found that the sponsor and his wife know little about the lives being led by the appellants. However, this finding depended heavily on the judge's assessment of the wife of the sponsor who in cross-examination was unable to answer simple questions put to her about where the children live, what they are doing. However, as Ms Everett acknowledged, there was unchallenged evidence that the wife had a hearing impairment. There is also considerable documentary evidence showing calls being made on a near daily basis from the sponsor's telephone to the telephone of Bhupendra.
10. Having heard from the sponsor and his witnesses and taken account of the evidence as a whole, I consider that both the sponsor and his wife in this case are elderly people who do not have a close group of particulars. In the case of witnesses less affected by infirmities I would have concerns that their vagueness was indicative of evidence that was not credible. In their case, however, I consider it more likely than not that they do in fact have almost daily contact by phone with one or more of the appellants and that they have in addition visited their children in 2014, 2015 and 2017 staying several weeks on each occasion. They may not be good at expressing in a hearing environment what they know about each of their children, but it is sufficiently clear that they retain close emotional connection, significantly over and above those normally to be found between parents and adult dependants of their ages.
11. Despite their vagueness, I am satisfied that the couple maintain strong family ties with their children and continue to see them as their dependants in both financial and emotional respects.
12. I am also satisfied from the appellants' witness statements, together with the other evidence, that they remain close to their parents and sorely miss their parents' absence. They are all single and unmarried. Their life experiences as described indicate that the sponsor remains the main patriarchal figure in their lives and will remain so until they are married. That remains the case, notwithstanding that they have no health problems and appear well able to look after themselves, to cook, clean and do their own laundry.
13. Ms Everett submitted that I should consider their failure to marry as a matter of choice. The evidence on this matter is not clear-cut but it seems to me that given their weak economic circumstances marriage would not be a priority for any of them. I am satisfied that they have not established independent lives and that they have not done so primarily for economic reasons. The evidence as to whether the appellants continue to live together is mixed, but whether they are or not, I am satisfied that each remains financially and emotionally dependent on the sponsor.

14. For the FtT judge one of the reasons he dismissed the appellants' appeal was that "[t]he appellants have been living apart from the sponsors as a direct result of the parents migrating to the UK rather than because of the siblings being away from the family unit because of educational circumstances" and "[t]he evidence suggested to me that the parents were content to leave for the UK without the appellants and without making obvious care arrangements" and "I believe that the decision was made by the parents that as adults their children could care for themselves". These findings have to be read in the context of the accumulated learning on Gurkha dependent cases elaborated most recently by the Court of Appeal in **Rai v ECO (New Delhi) [2017] EWCA Civ 320**. It is clear from that decision that significant weight had to be given to the fact that the appellants "would have applied at the same time for leave to enter the UK and would have come to the UK together as a family unit had they been able to afford to do so". The evidence in this case clearly demonstrates that the sponsor would have applied for the appellants to settle in the UK at the same time as him and his wife had they been able to afford to do so. They could not afford to and indeed had to borrow money to be able to go themselves.
15. The case of **Rai** also makes clear that whether or not the parents had chosen to leave Nepal to settle in the UK when they did, the critical question under Article 8(1) is whether family life subsisted then and whether it is still subsisting. For reasons given earlier, I am satisfied that family life between the sponsor, his wife and the five appellants was subsisting in 2012 and continues to subsist now.

Notice of Decision

16. For the above reasons I consider that the Article 8(1) issue must be decided in favour of the appellants. It is not in dispute that if they establish family life then the decision was not a proportionate one. Accordingly, I re-make the decision by allowing on Article 8 grounds their appeals against the ECO refusals of entry clearance.
17. No anonymity direction is made.

Signed:

Date: 25 April 2018.



Dr H H Storey
Judge of the Upper Tribunal