



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

Appeal Number: HU/02912/2016

THE IMMIGRATION ACTS

Heard at Field House

On 5th April 2018

**Decision & Reasons
Promulgated**

On 17th April 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

**REWATI LIMBU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding (Senior Home Office Presenting Officer)

For the Respondent: The Sponsor in person

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Entry Clearance Officer at New Delhi, with permission, in relation to a Decision of the First-tier Tribunal in which the Appellant's appeal had been allowed. I shall refer to the parties as they appeared in the hearing before the First-tier Tribunal.

2. The case came before Judge Asjad in the First-tier Tribunal in August of last year. It was an entry clearance case involving a Nepalese lady born on 9th January 1977. She had applied for entry clearance to settle in the UK as the dependent daughter of a former Gurkha soldier who was the Sponsor. The evidence that the judge heard was that the Appellant is emotionally and financially dependent on her parents and has not formed an independent family unit. Had the Sponsor been allowed to settle in the UK when he left the Ghurkhas his daughter would have been born in the UK. The Sponsor had been financially supporting his daughter since he and his wife left Nepal in 2010. He has visited Nepal three times since he left and his wife visits every year. The family maintain contact by telephone. Culturally in Nepal children are expected to stay with their parents unless and until they are married and the Appellant has been unsuccessful at attempts to seek work and has no other means of financial or emotional support.
3. The Judge accepted that there was family life between the Appellant and her parents. It was accepted that the Appellant could not qualify under the policy or Appendix FM and the Judge was therefore looking at Article 8 outside the Rules. The first consideration was whether Article 8 was engaged given the age of the Appellant and the Judge found on the evidence that the dependency was such as to engage Article 8 having addressed the Kugathas [2003] EWCA Civ 31 point. The Entry Clearance Officer challenges that on the basis that financial dependency alone, particularly where it may be contrived cannot amount to dependency over and above the normal emotional ties between an adult child and their parents. There was no suggestion however in this case that it was contrived and the evidence is quite clear that the Appellant has always been a member of her parents' household and entirely dependent upon them. There was a frequency of contact and visits and I find therefore that the Entry Clearance Officer's challenge is not made out and is in fact a disagreement with the Judge's conclusion.

Notice of Decision

4. That is the only challenge that the Entry Clearance Officer makes, and having found that that has no merit I dismiss the Entry Clearance Officer's appeal to the Upper Tribunal.
5. There has been no application for and no necessity to make an anonymity direction.

Signed

Date 12th April 2018

Upper Tribunal Judge Martin