



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06204/2016  
HU/06205/2016

**THE IMMIGRATION ACTS**

Heard at UT Field House  
On 30<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 13<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RANJAN GURUNG  
MR RAJIV GURUNG  
(ANONYMITY ORDER NOT MADE)

Respondents

**Representation:**

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer  
For the Respondents: Mr E Wilford, Counsel instructed by Howe & Co Solicitors

**DECISION AND REASONS**

1. For convenience I shall employ the appellations “Appellant” and “Respondent” as at first instance.
2. The Appellants are citizens of Nepal who applied for admission to the United Kingdom as the adult dependent relatives of Naryan Gurung a former Gurkha soldier, under the Immigration Rules and under Article 8 ECHR.

3. Their application was refused and their subsequent appeal to First-tier Tribunal Judge Hendry allowed on human rights grounds in a decision promulgated on 17<sup>th</sup> November 2017.
4. The Secretary of State took many points against that decision in their grounds of application and permission to appeal was duly granted. However, it is necessary to mention only one of the grounds as being sustainable as that was the (correct) position adopted by Ms Everett for the Secretary of State in the hearing before me.
5. Ms Everett relied solely on Ground 4 of the grounds namely that the Tribunal's approach to Article 8(1) was misconceived as it accepted that the simple presence of family life automatically engaged Article 8(1). It was said the Tribunal had had no regard to the Appellants' age, their maturity, their health or their ability to live their own lives.
6. Before me Ms Everett relied on those grounds and said that the judge had taken a somewhat slapdash approach to the family life findings. More evidence was required. The judge was not entitled to find that there was family life between the Sponsor and the Appellants. I was therefore asked to set the decision aside.
7. For the Appellants Mr Wilford relied on his speaking note which incorporated many of the matters highlighted in the grounds of application but which are no longer before me.
8. Per paragraph 16 of the speaking note he said it was evident from the decision that Judge Hendry clearly found that something more than "love and affection" existed between the Appellants and the Sponsor and there existed "real" "effective" or "committed support" in line with the test affirmed in **Rai v ECO New Delhi [2017] EWCA Civ 320** per Lindblom LJ at (35). Mr Wilford pointed out (paragraph 7 of the speaking note) that the Respondent did not dispute the Sponsor's credibility. It was his evidence that the Appellants, his sons, were unmarried, emotionally dependent and there were telephone communications and financial dependency. They depended on the Sponsor for their support for the roof over their heads. Any attempt to allege the Sponsor and or his sons were dishonest was consequently unsustainable. It was submitted that there was no error by the judge who had given full and cogent findings and the decision should stand.
9. I reserved my decision.

### **Conclusions**

10. The judge made a number of findings in relation to family life. She found in paragraph 85 that the Appellant and the Sponsor were in regular contact. She also found that the Sponsor made regular transfers of money to the Appellants. She accepted that there were both emotional and financial ties which had not ceased despite their parents' absence from Nepal in the two years before the application. She accepted (paragraph 87) that it is usual in Nepalese culture for families to live together after children reached the age of 18 and there would usually be some level

of interdependence between the parents and adult children in terms of mutual support and caring. For full reasons given she found that there was family life between the Sponsor, his wife and the Appellant such as to engage Article 8(1) noting that this appeared to be conceded by the ECO and the ECM (paragraph 88). She went on to refer to well-known case law including **Ghising and Others [2013] UKUT 00567 (IAC)** which dealt specifically with adult dependency of Gurkha soldiers noting that each case should be analysed on its own facts to decide if family life existed within the meaning of Article 8.

11. The judge noted that the facts in the appeal were very straightforward. The Sponsor and his wife had lived with their children until 2013 when they had applied for and been granted leave to enter and settle in the UK under a policy which had previously excluded them. There was clearly family life at that time. The Sponsor was clear that he would have applied to enter and settle in the UK earlier had that opportunity been available to him and that his sons would have been entitled to enter as minor dependants had that been the case (paragraph 99).
12. The judge found (paragraph 106) that if the Sponsor had been able to apply earlier he would have done so at a time when the Appellants would have been dependent children. She noted that the Appellants had only lived apart from the Sponsor for more than two years because there had been no provision in place to allow entry to the adult children of Gurkhas at the time the Sponsor and his wife had been allowed entry here.
13. The judge gave clear reasons why she found family life to exist in this case. She went on to allow the appeal on human rights grounds.
14. The challenge to the judge's decision is now a slender one and in my view, is not sustainable because the judge has given full reasons why family life existed between the Sponsor and the Appellants. The judge was entitled to make those findings and there is no question of a credibility negative finding against the Sponsor.
15. As such there is no error of law in the judge's decision which must stand.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity order is made.

Signed *JG Macdonald*

Dated 11<sup>th</sup> June 2018

Deputy Upper Tribunal Judge J G Macdonald