



Upper Tribunal  
(Immigration And Asylum

Chamber)

Appeal Number: HU/08319/2016

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**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 22 January 2018

Decision and Reasons Promulgated  
On: 01 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR GAUTAN DANGOL  
MRS SAPANA SHRESTHA  
(ANONYMITY DIRECTIONS NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr T Uppal, Banglen Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are husband and wife, born on 27 May 1981 and 11 October 1988 respectively, and are nationals of Nepal.
2. They appeal with permission against the decision of the First-tier Tribunal Judge Freer dismissing their appeals under the Rules and on human rights grounds in a decision promulgated on 6 September 2017.
3. In granting permission to appeal, First-tier Tribunal Judge Shimmin found that it was arguable that the Judge did not sufficiently address the appellants' difficulties on return or the best interests of their child.

4. Mr Uppal relied on his grounds of appeal where he contended that the Judge did not give “appropriate weightage” to the difficulties relating to the first and second appellant's integration into Nepal and failed to consider the best interests of the child under s.55 of the 2009 Act.
5. He contended that the Judge did not discuss the fact that the first appellant's family members were forced to live in India after the earthquake and the bundle contained evidence that the first appellant's only other brother lived in the Netherlands. The second appellant's father passed away during her childhood and her mother and only brother were also forced to live in India after the earthquake. They do not have any support from friends and family in Nepal.
6. The grounds also contend that the appellants expressed concerns to return to Nepal “due to political turmoil and lack of essential medicines for their child.” This was not discussed during the determination.
7. Mr Uppal referred to paragraph [18] of the determination where the Judge noted that the extended family has survived the earthquake. The second appellant has family originating outside the area affected by the earthquake. There is evidence to suggest that a number of relatives live who may be able to assist the appellants in settling into new accommodation and finding work.
8. Mr Uppal submitted that no question was asked of the appellant about this. They had expressed concerns about returning to Nepal on account of the political turmoil and lack of essential medicines for the child. Further, an incorrect private life test was applied [29]. The assessment of the likely interference is not whether the appellants could establish a private life elsewhere but rather whether their removal would interfere with the private life they currently enjoy. Manifestly, that would not be the case.
9. On behalf of the respondent, Mr Jarvis referred to the legal framework adopted by the appellants in the grounds from paragraphs [2-9]. He submitted that most of these are not relevant.
10. With regard to the error of law suggested, it was asserted that no consideration was given about the absence of family support. However, there is in fact detailed consideration given by the Judge as to what they would face on return.
11. Mr Jarvis referred to [15]. The Judge found that the first appellant is culturally Nepalese and would find it much easier to be understood in Nepal. He found it to be a concern that the educated family work in a fast food restaurant, well under their capacity. There is no public interest demonstrated in allowing former students to work in such jobs which must be unfulfilling for them. This is not the fault of the respondent but a direct consequence of a choice to attempt to settle in the UK after they had completed their studies. The purpose of their studying in the UK is to gain a qualification and there was no legitimate expectation of any further leave after their studies were completed (other things being equal).
12. Mr Jarvis pointed to the printouts produced by the Home Office at [11] regarding unemployment statistics over a period of several years in both countries. A smaller percentage of the population is recorded as unemployed in Nepal. The UK

employment rate stood at 4.9 in July 2016 and fell steadily to 4.4 in June 2017. The 2016 figures for Nepal were 3.2 for the year. Nepal as a whole from 2007 to 2016 never exceeded 3.3.

13. Judge Freer also noted that the appellant stated in evidence that he has returned once to Nepal and visited family members who are now in India. He also noted that his wife has a brother in India [12]
14. He also had regard to the appellant's signed witness statement at 'J' in the respondent's bundle and the attached photographs showing his family home which was devastated by the 2015 earthquake. However, he noted that this statement is dated October 2015 and was almost two years old.
15. Mr Jarvis submitted that the findings at [18] with regard to his extended family is just one of a number of findings. The predominant finding is that the appellants could relocate. There was no reason why they would be unable to find work. The child is young and there was no proposal to separate them on removal.
16. The child will have access to education at the appropriate age. There was no evidence that realistically showed that the parents would be unable to maintain and support the child as well as themselves in Nepal, having regard to the material evidence of serious damage to the former family home, which he accepted is now unsafe and will not be occupied [19].
17. He noted that Immigration decisions often require relocation within the country of origin and this is one of those decisions. It is not shown to be rendered unlawful, disproportionate or unreasonable thereby [19].
18. Mr Jarvis noted that none of the findings relating to the ability of the appellants to support themselves and obtain employment has been challenged. There has been no material error of law.

### **Assessment**

19. First-tier Tribunal Judge Freer has given a detailed decision. The child of the family was neither British nor settled in the UK, nor had he lived here for at least seven years. The Judge noted that no evidence was submitted from friends in the UK with whom the appellants wished to maintain connections.
20. As noted, the appellant adopted as evidence his signed witness statement found at 'J' in the respondent's bundle. However, that statement is dated October 2015 and was almost two years old at the date of hearing [13].
21. The first appellant has a Bachelor degree in Nepal and gained further qualifications in the UK. He has worked for six months in Nepal. Both he and his wife worked part time in McDonald's. The judge noted that the appellant worries that he will not be given a job in Nepal because of the time gap after his degree [14].
22. The Judge stated that the purpose of studying in the UK was to gain a qualification and there was no legitimate expectation of anything further after the studies had completed, (other things being equal) - [15].

23. The 2015 witness statement which had not been updated must be given limited weight, particularly in terms of any transient matters mentioned therein [16]. He found that it overstated the degree of detachment from Nepal at the date this was written and the appellant has not addressed adequately the issue of reconstruction over time or employment opportunities in the following two years.
24. Judge Freer noted that there was no evidence of any serious search for work in Nepal. The appellant had been funded by a loan from the family in his studies, which raised questions about his motivation to find work. The facts, supported by statistics indicated that both parents could find work in Nepal. There is no challenge by the appellants to that finding.
25. The Judge had proper regard at [19] to s.55 of the 2009 Act regarding their child, who was not a qualifying child. He found that it was in the best interests of the child to remain with both parents and there was no proposal to separate them on removal. In addition, the child will have access to education at the appropriate age. There was no evidence that realistically showed that the parents would be unable to maintain and support the child as well as themselves in Nepal.
26. He also had regard to the material evidence of serious damage to the former family home which he accepts is now unsafe and will not be occupied. However, this is one of the cases where relocation in the country may be required. Nor were there any exceptional factors relating to the child.
27. He had proper regard to Agyarko v SSHD [2017] UKSC 11. In order to succeed under Article 8 outside the rules, the appellants will need to show that the consequences of the decision will cause very substantial difficulties or exceptional circumstances or unjustified harshness for them.
28. He also had regard to Patel v SSHD [2013] UKSC 72 at [57] which prevents PBS students from relying on Article 8. He noted that this authority is applicable to these appellants who had no legitimate expectation of remaining here after studies were completed.
29. He considered their claims based on Article 8 and adopted the Razgar approach. He had regard to s.117B of the 2002 Act. At [29] he concluded that the first appellant spent about 28 years in Nepal. He has visited it. There is no qualifying child or partner. The status is precarious. He is doing work for which he is underqualified. All his relatives and in-laws are present in the sub-continent. Those factors tip the balance in the weighing exercise strongly against the appellants.
30. The appellants did not make a protection claim. The political turmoil referred to in the grounds of appeal were not relevant to the appellants. The first appellant has a degree and further qualifications in the UK. He thus has realistic prospects of gaining employment in Nepal.
31. In the circumstances the finding that there were no compelling circumstances warranting a grant of leave outside the Rules is sustainable on the evidence presented. The findings were not outside a range of reasonable responses to the evidence.

**Notice of Decision**

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

Anonymity directions not made

Signed

Date 30 January 2018

Deputy Upper Tribunal Judge C R Mailer