



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/09360/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 8<sup>th</sup> May 2018

Decision Promulgated  
On 13 June 2018

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MISS MALTI THAPA  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the appellant: Ms A Everett, Home Office Presenting Officer  
For the respondent: Mr J Khalid, Counsel.

DETERMINATION AND REASONS

Introduction

1. The Secretary of State is the appellant in these proceedings. However, for convenience, I will continue to refer to the parties hereafter as they were in the First tier Tribunal.

2. The respondent has been granted permission to appeal the decision of First-tier Tribunal Judge M R Oliver, who, in a decision promulgated on 7 August 2017 allowed the appellant's appeal against the respondent's refusal of entry clearance.
3. The appellant was born on 28 November 1987. On 6 March 2016 she applied for settlement with her widowed mother, hereinafter referred to as her sponsor. Her father was a former Gurkha who died on 1 January 1998. Her sponsor was granted a settlement visa on 9 February 2010 and came to the United Kingdom on 26 November 2011. She remains here. The appellant has four other siblings living in Nepal.
4. Her application was refused on 16 March 2016. The entry clearance officer found that she did not meet the requirements of the rules or the policy. Regard was had to the grant of leave on a discretionary basis and reference made to article 8. It was pointed out the appellant had been living in Nepal for almost 5 years in her mother's absence and is felt she would be able to live independently.
5. Her appeal was heard by First-tier Tribunal Judge M R Oliver on 5 July 2017. Mr Khalid appeared for the appellant as he does now. The respondent was unrepresented. The judge had a statement from the appellant in which she described a life of destitution and that when her mother applied for settlement the family did not have the money to pay for her application. She said she had no contact with her siblings but maintained regular contact with her mother. She said she had been in full-time education but there was no prospect of employment.
6. The judge heard from the sponsor. She adopted her statement in which she said her late husband experienced poor health and was unable to find employment after leaving the Army. She states that her husband served in the British Army for 16 years, having enlisted in November 1961 and retired in July 1977 with exemplary military conduct. He died in 1998 at the age of 54. She refers to receiving a small widow's pension from the Ministry of Defence. She has five children living in Nepal and the appellant lived with her younger brother in the family home. She had studied nursing but this did not lead to employment and she refers to cronyism and caste discrimination in Nepal
7. She visited Nepal in 2012, 2014 and 2016. Telephone records were produced but she could not identify to whom the calls related as she was illiterate. It was recorded that she could not remember sending money.
8. A statement from the appellant sets out that when her mother applied for settlement she was told she was over the age and the family did not have the financial resources to pay for the application. She states that her other siblings live independently and she has no contact with them. She stated she draws

her mother's pension for her daily expenses. Until recently she was in full-time education and had been supported by her mother.

9. There was a letter from the local municipal office stating the appellant is unmarried and dependent upon her mother's income. The family register records daughters born in 1980 to 1987 and sons in 1969, 1974 and 1982.
10. The sponsor's passport confirms her visits to Nepal. There were telephone records showing ongoing contact between the United Kingdom and Nepal though it is not possible to identify the appellant. There was evidence of money transfers between the sponsor and the appellant
11. In paragraph 16 of the decision the judge said that the most important question to be resolved is whether family life exists between the appellant and her sponsor. The judge recorded that the length of time apart may be an important factor. This was tempered by the degree of real choice available when the parties separated and the expectation that there would have been an earlier reunion.
12. The judge went on to record at paragraph 17 that her father had been discharged from the Army before she was born and died when she was 10. She was 23 when her sponsor left and the application was made nearly 5 years later. At paragraph 19 the judge alluded to the appellant having a nursing qualification and said it was surprising she had been unable to find employment. However, the judge found that the appellant met a number of the considerations in Annex K.
13. The judge found family life existed when her sponsor mother left and accepted the delay may have been caused by difficulty raising the application fee. Reference is made to visits by her sponsor, with the judge concluding that emotional and financial dependency existed. Consequently, family life within the meaning of article 8 was found and the decision was a disproportionate interference.

#### The Upper Tribunal.

14. Permission to appeal was granted on the basis of judge failed to give adequate reasons for concluding emotional and financial dependency existed. No reasons were given as to the finding of family life at the time of separation or of financial dependency, given the sponsor could not remember sending money. Finally, permission was granted on the basis of judge did not have regard to the public interest factors involved.
15. At hearing, Ms Everett relied on the grounds for which permission had been sought. Those grounds had referred to the lack of evidence of contact or of financial remittances. No explanation had been given as to emotional ties over

and above the norm between adults nor any explanation as to what it was that made the appellant any more vulnerable or in need of support than anyone else of her age without medical issues or disabilities.

16. Mr Khalid contended that the judge was not required to give detailed reasons. In the present case the judge set out the history of the Gurkhas. The judge then had the appellant's bundle which contained the statements which were adopted. There was evidence of contact in the form of calling cards.

### Consideration

17. First-tier Tribunal Judge Oliver correctly identified the most important question as being whether family life existed within the meaning of article 8. Normal emotional ties between a mother and adult child do not, without more, constitute family life under Article 8. Whether there exists family life will invariably be an intensely fact sensitive one. Rai v Entry Clearance Officer, New Delhi [2017] EWCA Civ 320 held that family life was established where there was sufficient degree of financial or emotional dependence between adults, and it was unnecessary to look for some extraordinary or exceptional feature of that dependence. It was wrong to concentrate on a parental decision to migrate to and settle in the UK without examining the practical and financial realities leading to it. It was important to determine whether as a matter of fact an adult child had family life with his parents which existed at the time of their departure and endured beyond it (Beatson LJ).
18. I find that in concluding article 8 was engaged First-tier Tribunal Judge Oliver failed properly to apply to the particular circumstances of this case and the principles bearing on the concept of the family life of adult children with their parents. The judge did ask the correct question at para 16 but did not make the necessary findings of fact or give reasons. The judge does not go into any detail about the family dynamics when the sponsor came to United Kingdom in March 2011. There are no details as to who was living where. At that stage the appellant was 23 years of age. She studied to be a nurse. At the age of 28 she applied to join her sponsor after a five-year gap. There was little by way of fact-finding about the relationship in the interval. There was evidence of telephone calls to Nepal but has to be borne in mind the sponsor has five children and the recipients of the calls were not identified. Similar considerations apply in respect of the visit she has made. The judge did not deal with the contradictory accounts as to whether or not the sponsor did send money to the appellant. Paragraph 16 and 17 are the closest the judge comes to analysing this question but this is more by way of setting the scene. It is unfortunate that no presenting officer was in attendance but that is all the more reason for the judge to explain to the respondent the reasons behind the decision made.

19. It is my conclusion that there is a fundamental flaw in the decision in that the existence of family life within the meaning of article 8 is not properly explained. This should have involved an analysis of the evidence in relation to the situation at the time the appellant and her sponsor separated and what has taken place in the interval. There was minimal explanation in this regard. It is only when article 8 is found to be engaged that it is necessary to move on to the proportionality issue. For this reason I am not gone on to consider the other grounds advanced.

### Decision

The decision of First-tier Tribunal Judge Oliver allowing the appeal materially errs in law and cannot stand. That decision is set aside with the matter to be relisted for de novo hearing in the First-tier Tribunal.

Francis J Farrelly  
Deputy Upper Tribunal Judge

### Directions

1. Relist in the First-tier Tribunal for a de novo hearing, excluding First-tier Tribunal Judge Oliver. Taylor House would be the appropriate venue unless the appellant's representatives suggest an alternative
2. A Nepalese interpreter will be required
3. In preparing for the appeal the appellant's representatives are directed towards the grounds of challenge advanced by the respondent. In particular, they should assemble evidence to demonstrate the existence of family life within the meaning of article 8.
4. The appeal bundle should be provided to the respondent no later than two weeks before the date of hearing
5. It is anticipated the hearing would last less than two hours

Francis J Farrelly  
Deputy Upper Tribunal Judge

Dated 11 June 2018