



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

Appeal Number: HU/10339/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 28th February 2018**

**Determination Promulgated
On 6th March 2018**

Before

UPPER TRIBUNAL JUDGE COKER

Between

ENTRY CLEARANCE OFFICER- New Delhi

Appellant

And

RAJIT GURUNG

Respondent

Representation:

For the Appellant: Ms A Brocklesby- Weller, Senior Home Office Presenting Officer

For the Respondent: Mr O Manley, instructed by N C Brothers & Co solicitors

DETERMINATION AND REASONS

1. In a decision promulgated on 22nd May 2017, Mr Gurung's appeal against a decision of the ECO to refuse him entry clearance as the dependant son of Rambahadur Gurung, a former Gurkha soldier was allowed by First-tier Tribunal Judge Birk. First-tier Tribunal Judge Birk found that there was family life such as to engage Article 8 and that the decision to refuse entry clearance was disproportionate.

2. In particular, the judge found:

- (a) Mr Gurung senior was credible and his account of the history could be relied upon.
- (b) He and his wife came to live in the UK in 2010; Mr Gurung senior travelled to visit his son in 2012, 2014 and 2015. There have been visits in other years by Rajit Gurung's mother
- (c) Rajit Gurung was in education until 2016; the separation has not been for longer than two years.
- (d) Rent from tenants who lived in the family home, with Rajit Gurung, was not permanent financial support for him.
- (e) It is credible that money transfers to Rajit Gurung's brother were for him and his brother; and there are more recent money transfers to him.
- (f) Rajit Gurung has not found employment to support himself.
- (g) Although an adult, Rajit Gurung and his parents have remained a family unit despite the physical separation; he remains their responsibility.

3. The ECO sought and was granted permission to appeal on the grounds that it was arguable the First-tier Tribunal judge had not applied the *Kugathas* test despite reminding itself of the test. It failed to refer to emotional ties at all and had not considered elements of dependency; a 28-year-old man who has been living apart from his parents for seven years with visits requires more to establish dependency.

4. I received a Rule 24 response from N C brothers & CO; the ECO failed to comply with directions and provide a skeleton. I directed that an explanation for such failure be provided to me in writing by 4pm Monday 5th March 2018. A full apology has been received.

5. I heard oral submissions from both parties.

6. The essential difference between the parties was that although findings had been made about the relationship between Mr Gurung and his parents, insufficient findings had been made to establish that there was dependency such as to engage Article 8. In particular Ms Brockelsby-Weller relied upon the phrase in *Kugathas* which refers to emotional ties needing to be more than the normal emotional ties that exist between parents and children. There is no challenge to the findings of fact made (which are briefly set out in para 2 above) and no challenge to the finding by the First-tier Tribunal judge that Mr Gurung senior's account was credible and could be relied upon.

7. The First-tier Tribunal judge did not, specifically, refer to "emotional ties". The witness statement submitted by the family together with the oral evidence paint a detailed and comprehensive picture of a close family relationship with Mr Gurung in frequent contact with his parents in addition to visits. The judge has not referred to each element of the evidence; there is no requirement to do so. The judge's finding that there is a maintenance of family relationships, a close family unit, that he

remains their responsibility when considered in the context of the findings overall, point to a relationship that fully engages Article 8.

8. *Rai v ECO* [2017] EWCA Civ 320 and *Ghising* [2013] UKUT 567 (IAC) all point to a broad and encompassing assessment of the family relationship – not merely emotional ties. The absence of specific reference to emotional ties in this case in the decision does not, when the evidence (which was accepted) and the findings are read together, negate a clear inference that the emotional ties do transcend those which could be said to exist normally between parents and children. The challenge by the ECO is essentially a reasons challenge. The reasons given by the First-tier Tribunal judge are sufficient to enable the losing party to understand why she lost and provide an adequate analysis of why the decision was disproportionate.

9. There is no error of law in the judge's decision.

Conclusions:

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

The decision of the First-tier Tribunal stands.

Date 5th March 2018



Upper Tribunal Judge Coker