



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

Appeal Number: HU/10831/2016
HU/10839/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2018**

**Decision & Reasons Promulgated
On 21 February 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**NIRMAL GURING
REGINA GURING
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Jaisri, Counsel instructed by Sam Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are siblings and citizens of Nepal born respectively on 3 October 1982 and 31 May 1991. They seek entry clearance to join their mother, the sponsor. she is the widow of a former Gurkha. The

appeals are brought on human rights grounds and were heard and decided jointly by First-tier Tribunal Judge Greasley at Hatton Cross on 7 July 2017. They were dismissed by way of a determination promulgated on 13 July 2017.

2. Permission to appeal was granted by First-tier Tribunal Judge Birrell on 24 December 2017 and the matter came before me on 12 February 2017.

The hearing

3. Mr Jaisri conceded that Annex K did not apply to the appellants because the sponsor was the widow of a Gurkha and not a Gurkha herself. He submitted that the judge had failed to make findings on the quality of family life that existed at the time of the sponsor's departure. He submitted that the sponsor had left the UK and returned to Nepal for two years and was living with the appellants at the date of their entry clearance application. He argued that there had been inadequate findings on the sponsor's evidence and the family life issue. He further submitted that the judge had erred in his approach to the sponsor's decision to leave the appellants and live in the UK; that conflicted with the guidance in Rai [2017] EWCA Civ 320.
4. Mr Duffy submitted that this was an unusual appeal in that the sponsor was not a Gurkha but the widow of one. He submitted that the judge had found there was no family life because the appellants were no longer dependent beyond the normal emotional ties. There was no supporting evidence to show particularly close ties. Whilst another judge may have reached a different decision, that was not the test.
5. Mr Jaisri responded. He submitted that the judge had the evidence of the sponsor's passport to show that she had travelled to Nepal.
6. That completed the submissions. At the completion of the hearing I reserved my determination which I now give.

7. Discussion and conclusions

8. Four criticisms have been made of the judge's decision. The first is that he made no finding on whether there was family life between the appellants and their mother, the sponsor, prior to her departure from Nepal in December 2013. Having carefully considered the judge's findings and conclusions at paragraphs 20-25, I note that despite this being an article 8 claim, the judge did not follow the

Razgar steps although he refers to the guidance at the conclusion of his discussion (at 24) and did not touch upon the issue of family life until paragraph 24. Indeed, he commences his assessment with whether the appellants were fit to work (at 21-22). At paragraph 24 he finds that: “there is, to some extent, family life links” (sic). I am unclear what the judge means by this as either there is family life between the parties or there is not. He then proceeds to conclude that the decisions are proportionate and lawful without any further reasoning. As far as the first criticism is concerned, therefore, I conclude that it has merit. Nowhere in the determination was there any finding on family life at the time of the sponsor’s departure and additionally, the finding that has been made is unclear.

9. The second complaint is that the judge maintained there was no evidence that the sponsor had resided with the appellants when she returned to Nepal for her extended visit when there was the sponsor’s oral and written evidence to this point. Mr Duffy submitted that the judge must have meant corroborative evidence and that may be the case. However, it was still incumbent on him to consider the sponsor’s evidence and to make a finding on it. This was not done.
10. Ground three is that the assessment contained no reference to the historical injustice point although this is clearly dealt with in the sponsor’s witness statement. That is also a valid criticism. The judge refers to the point when summing up the respondent’s case but it does not feature in his own assessment.
11. Finally, the judge erred in his approach to the matter of the sponsor’s decision to leave the appellants and move to the UK. His finding that she made a choice about leaving them, is contradictory to the approach set out in Rai (at 38, 39 and 42). The judge did not engage with the issue of whether the appellants would have come here earlier with their mother had they been able to afford to do so. However, even if the sponsor had chosen to leave Nepal to settle in the UK, the judge was still required to consider whether there was family life at the time she left (which ties in with the first ground).
12. For those reasons, the judge erred in law and his decision is set aside. No findings are preserved and the matter is remitted to the First-tier Tribunal for a hearing de novo.
13. **Decision**
14. The First-tier Tribunal made errors of law and the decision is set aside in its entirety. The appeal is remitted for re-hearing to another judge of the First-tier Tribunal.

15. **Anonymity**

16. I make no anonymity order.

Signed

A handwritten signature in black ink, appearing to read "R. Keir" with a period at the end. The letters are cursive and somewhat stylized.

Upper Tribunal Judge

Date: 15 February 2018