



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/12439/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 September 2018**

**Decision & Reasons  
Promulgated  
On 25 September 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MISS MITHU SUNAWAR  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Layne, Counsel, instructed by Everest Solicitors  
For the Respondent: Mr Lyndsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. No anonymity order is made.
2. The appellant is a national of Nepal. The appellant applied on June 6, 2017 for entry clearance as her mother's dependent child.

3. The respondent refused that application in a decision dated September 6, 2017 as he was neither satisfied the appellant satisfied the requirements of paragraph EC-DR1.1 of Appendix FM of the Immigration Rules nor the respondent's policy in respect of Foreign and Commonwealth HM Forces dependants over the age of eighteen (Annex K).
4. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Ajula (hereinafter called "the Judge") on June 14, 2018 and in a decision promulgated on June 28, 2018 the Judge refused her appeal.
5. The appellant appealed this decision on July 11, 2018. Permission to appeal was granted by myself on August 4, 2018. I found it arguable that the Judge's approach in paragraphs 26 and 27 of the decision failed to follow the approach set out in Ghising [2013] UKUT 00567 (IAC) and Kugathas v SSHD [2003] EWCA Civ 31 although in doing so I made it clear that even if there was an error the outcome may ultimately be the same.
6. The matter came before me on the above date for submissions on the relevant issues.

### **SUBMISSIONS**

7. Mr Layne adopted the grounds of appeal and submitted the Tribunal had been tasked to consider whether there had been family life between the appellant and her mother and whether that family life was continuing. Mr Layne submitted that the Judge had erred in paragraphs 26 and 27 of the decision by considering whether the appellant needed emotional support from her mother in light of the fact she was now 36 years of age and she had two adult siblings living in Nepal. He submitted that the appellant had demonstrated a continuing financial dependency and the evidence that had been produced by the sponsor and appellant also showed ongoing emotional dependency. The statement provided by the appellant demonstrated that she was unemployed and reliant on monies sent to her by her mother. Following the decision in Ghising he submitted that the Judge should have allowed the appeal on the basis of the historic injustice.
8. Mr Lindsay opposed the application and submitted that the Judge was fully aware of the correct approach to take as he had set this out in paragraph 23 of the decision. The Judge reminded himself that he had to establish whether there was extant family life between the appellant and sponsor in terms of something more than the normal emotional ties between parents and their children. In paragraph 26 of his decision the Judge concluded that the appellant had closer ties with her siblings than with her mother and that mere contact between the appellant and her mother and occasional visits did not amount to family life. In any event, the Judge went on to consider the alternative that there was family life and made findings in paragraph 29 that had been open to him.

## **FINDINGS**

9. The appellant's father enlisted in the Gurkha brigade in November 1959 and served until he was discharged in July 1970. He died in June 1996. On July 9, 2012 the appellant's mother was granted entry clearance and permanent residence in the United Kingdom as the widow of an ex Gurkha and she moved to the United Kingdom on July 20, 2012 and has lived here since that date. A previous application for entry clearance by this appellant was refused on March 13, 2015 on the basis of "unconvincing supporting documents".
10. It was acknowledged at the hearing before the First-tier Tribunal that the appellant could not meet either the Immigration Rules or Annex K. This was always an application under article 8 on the basis of family life.
11. The evidence shows that the appellant's mother lives alone in this country whilst the appellant and two siblings remain in Nepal. The appellant is 36 years of age and claimed she was both emotionally and financially dependent on the sponsor. Evidence was submitted to demonstrate the sponsor sent money to the appellant and she had continued to visit the appellant and her siblings in Nepal. The appellant's mother relied on a pension topped up by pension credit and she also received housing benefit to pay for her accommodation.
12. It was not disputed in the First-tier Tribunal that the appellant was uneducated and continued to live in a property that was owned by her mother.
13. In deciding whether there was family life the Judge reminded himself of the appropriate paragraphs in both Kugathas and Ghising (approved in Gurung v The Secretary of State for the Home Department [2013] EWCA Civ 8. The Court of Appeal in Gurung provided further clarification on the issue of dependency and gave guidance on when the child/parent bond of family life comes to an end for the purposes of article 8.
14. The Upper Tribunal revisited the decision of Ghising in Ghising & Others (Ghurkas/BOCs: Historic Wrong; Weight) [2013] UKUT 567 (IAC) and the Judge set out the important aspects of this authority in paragraph 22 of his decision.
15. Having set out the law the Judge quite properly asked himself the question namely, "was the extant family life between the appellant and the sponsor in terms of something more than the normal emotional ties between parents and children?"
16. Mr Layne submission is that whilst he may have properly been aware of the law he failed to apply it correctly.

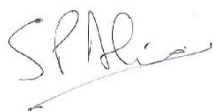
17. In considering the appellant's personal circumstances the Judge noted there was nothing to suggest she had any physical or mental health issues. Mr Layne criticises the Judge's approach in paragraph 26 of his decision because the Judge posed the question, "why did the appellant still need the emotional support from her elderly mother?"
18. However, the Judge went on to consider the level of emotional support that existed between the appellant and her mother and concluded that in the absence of any health-related issue the level of emotional support that existed was no different to that which would have existed between any parent and a child aged 36. Whilst there was a reference to emotional support from siblings I am satisfied that this was something the Judge was entitled to make a reference to as long as this was not a reason for saying there was no emotional support between the appellant and her mother over and above that which normally existed. I am satisfied that this was not how the Judge approached this issue.
19. At paragraph 27 of the Judge's decision the Judge found that "financial support without more" could not create family life between an elderly parent and child although this has been challenged by Mr Layne who stated that the appellant was wholly reliant on her mother for support as she was unemployed.
20. The difficulty facing the appellant in this appeal is that the Judge did consider both issues and at paragraph 29 of the decision the Judge gave reasons why the interference with family life was fully proportionate despite any historic injustice. The Judge was critical of the lack of explanation as to why the appellant, at the age of 36, had been unable to engage in productive or resourceful work and maintain herself.
21. In granting permission to appeal I made it clear that the grant was not an indication that there was an actual error in law but that the issue deserved further argument. Having heard these submissions presented by both Mr Layne and Mr Lindsay I am satisfied that the decision reached by the Judge was one that was open to him and in refusing the appeal the Judge examined the evidence and caselaw and reached a conclusion that was open to him.

### **DECISION**

22. I therefore find there has been no error in law and I uphold the original decision.

Signed

Date 22/09/2018



Deputy Upper Tribunal Judge Alis

**FEE AWARD**  
**TO THE RESPONDENT**

I make no fee award as I have dismissed the appeal.

Signed

Date 22/09/2018

A handwritten signature in black ink, appearing to read 'SPAL' with a flourish underneath.

Deputy Upper Tribunal Judge Alis