



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11047/2018**

Appeal Numbers:

THE IMMIGRATION ACTS

**Heard at Field House
On 31 July 2019**

**Decision & Reasons Promulgated
On 08 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS JAYANTI LIMBU

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer
For the Respondent: Ms A Jaja, Counsel instructed by Howe & Co

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of Judge Sweet in which he allowed the appeal of the Respondent against the decision of the Secretary of State to refuse her application for leave to enter in the United Kingdom on human rights grounds. I will refer to the Respondent as the 'Claimant' and to the Appellant as the 'Secretary of State'
2. The application under appeal was refused on 28 March 2018. The Claimant exercised her right of appeal to the First-tier Tribunal. The appeal came before Judge Sweet on 16 April 2019 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. His application was granted by First-tier Tribunal Judge Parkes on 27 June 2019 in the following terms:

The judge found the appellant did not meet the requirements of IDI Annexe K but found that there was a family life and emotional dependency and that exclusion was disproportionate.

The grounds argue that the judge erred as the appellant lives with her sister who had returned to Nepal in 2018, the family are not a unit and the circumstances did not justify a grant of leave.

In addition to the factual error on which the decision appears to be based compelling circumstances would be needed to succeed when the rules are not met, and it is arguable that the judge did not give sufficient reasons for the findings made.

Background

3. The history of this appeal is detailed above. The Claimant is a citizen of Nepal born on 11 December 1982. She applied for leave to enter the UK as the adult dependent relative of her father an ex-Gurkha soldier. The Secretary of State refused her application because she was over the age of 30 and there was insufficient evidence of financial and emotional dependency and she had lived apart from her father for more than two years of the time of the application.
4. At the appeal hearing the Claimant's father and brother both gave evidence and submitted written witness statements. The Judge found their evidence to be credible and that family life existed. He said that all members of the family have been granted settlement save for the Claimant herself and in his view it was clear that there was emotional dependency.
5. The grounds of appeal assert that the Judge erred in law by making a material misdirection. The Judge said that the Claimant had been separated from the family unit whereas her sister, Sharmila, had returned to live with her in Nepal.

Submissions

6. At the hearing before me Mr Walker appearing for the Secretary of State said that the grounds latch on to the fact that one family member returned to Nepal. However, the evidence showed that, having been granted entry clearance to settle in the United Kingdom, she returned to be with her sister, the Claimant, who was on her own. This was not taken into account in the grounds and looking clearly at what was before Judge Sweet he was justified in allowing the appeal.
7. I did not ask Ms Jaja to address me and made an extempore decision dismissing the Secretary of States appeal.

Decision

8. This case involves a Gurkha family who have sought to settle in the United Kingdom in accordance with the Secretary of State's policy and guidance. The Claimant's father (the sponsor) is an ex-Gurkha soldier and he was granted permission to settle in the United Kingdom along with his wife and minor son on 1 March 2012. Having been granted permission the sponsor and his son came to United Kingdom on 6 April 2012 leaving the sponsor's wife behind in Nepal to look after their two adult daughters. After seeking legal advice, the younger daughter, Sharmila, who was under 30 applied for settlement in United Kingdom and her application was granted and she entered the UK on 13 September 2016. The evidence before Judge Sweet showed that the Claimant's mother remained with her in Nepal. When the Claimant applied for entry clearance it was on the basis that all of the family, apart from her, now had permission to reside in United Kingdom. In fact, Sharmila, having been granted permission to stay in United Kingdom returned to Nepal to be with her sister.
9. Judge Sweet found that the Claimant shared a family life with her other family members and that the ties were more than mere emotional ones. He found that it was wholly disproportionate for her not to be able to join her family said that the family should remain a family unit. The Secretary of State's grounds of appeal, as conceded by Mr Walker, are misconceived. Whereas the Claimant's sister had indeed returned to Nepal to be with her in Nepal this was not evidence that the Claimant would not be alone in Nepal and therefore had a separate family life with her sister rather it was an example of the tight mutual dependency and intertwined family life which existed between the family members. In the first place the Claimant's mother, despite having been granted entry clearance, remained with her daughters to support them in Nepal and then when the one daughter was granted entry clearance to enable her to settle with the family in United Kingdom she remained with the Claimant waiting for her entry clearance to be granted. Judge Sweet took all these matters into account in his decision and no error law is disclosed.

Summary of decision

10. Appeal dismissed. The decision of the First-tier Tribunal stands.

Signed

J F W Phillips

Deputy Judge of the Upper Tribunal

Date: 31 July 2019