



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11604/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 31 July 2019

On 08 August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

MR BED BAHADUR THAPA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel instructed by Everest Law
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Beg in which she dismissed the appeal of the Appellant against the decision of the Secretary of State to refuse her application for leave to enter in the United Kingdom on human rights grounds.
2. The application under appeal was refused on 24 April 2018. The Appellant exercised his right of appeal to the First-tier Tribunal. The appeal came before Judge Beg on 4 April 2019 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Parkes on 27 June 2019 in the following terms

The Judge found the Appellant could not meet the requirements of the Immigration rules and was not assisted by article 8 and distinguished the circumstances from those of his brother.

The grounds argue that the Judge erred in respect of the circumstances in which the Appellant had left to work in Malaysia, the circumstances of his return and his situation since then. It is argued that the Judge went on to err in respect of the family life test and under section 117B.

It is arguable that the Judge proceeded on a factually flawed basis and in that event the grounds are arguable.

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Nepal born on 2 May 1982. He applied for leave to enter the UK as the adult dependent relative of his father an ex-Gurkha soldier. The Secretary of State refused his application because he was over the age of 30 and there was insufficient evidence of financial and emotional dependency and he had an independent life and had lived apart from his father for more than two years of the time of the application.
4. At the appeal hearing the Appellant's father and mother both gave evidence and submitted written witness statements. The Judge found their evidence, for the most part, to be credible and that normal family life existed but that this did not go beyond normal emotional ties or show a relationship of real, committed and effective support.
5. The grounds of appeal assert that the Judge erred in law by making factual errors. The Appellant had not carved out an independent life by relocating to Malaysia following the sponsor's settlement in the United Kingdom Further the Judge had made a material misdirection in requiring cumulatively real, committed and effective support.

Submissions

6. At the hearing before me Ms McCarthy appeared for the Appellant. She said that the Judge has misunderstood the timing of the period of work in Malaysia and concluded in error that he formed an independent life. Paragraph 21 of the decision is wrong and conflicts with paragraph 18 which is right. When the Appellant returned from Malaysia his parents were still in Nepal and he returned to live with them. In addition to that error further elements of the evidence were not considered. The error is the one misunderstanding.
7. For the Respondent Mr Walker said that he could not argue against the grounds. The Judge has made a material error of fact.
8. Both representatives agreed that I should remake the decision on the evidence that was before the First-tier Tribunal. Accordingly, I gave an

extempore decision allowing the appeal and setting aside the decision of the First-tier Tribunal and remade the decision by allowing the appeal. My reasons are given below.

Decision

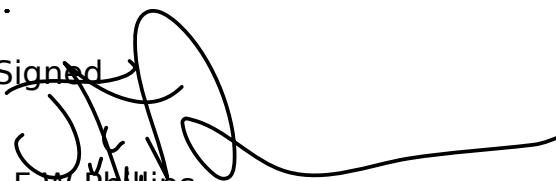
9. This case involves a Gurkha family who have sought to settle in United Kingdom in accordance with the Secretary of State's policy and guidance. The Appellant's father (the sponsor) is an ex-Gurkha soldier and he was granted permission to settle in the United Kingdom along with his wife and they arrived in the UK on 13 June 2012. The Appellant and his brother applied together to join their parents in July 2015 but their applications were refused. The Appellant's brother appealed and his appeal was allowed so he was able to join the family in United Kingdom. The Appellant reapplied and was again refused. Judge Beg dismissed his appeal against that refusal.
10. In dismissing the appeal and in considering whether a protected family life existed between the Appellant and his parents the Judge made contradictory findings. At paragraph 18 of her decision the Judge says "I find in any event ... that the appellant did work in Malaysia." She then went on to note the submission that when the Appellant returned to Nepal in 2011 he did not work and the bonds of family life were reconstituted. At paragraph 21 the Judge says "following the sponsor's settlement in the United Kingdom the appellant carved out an independent life for himself by relocating to Malaysia where he lived and worked for three years."
11. The inconsistency reveals a very distinct error of fact. It was always the case that the Appellant went to work in Malaysia to support his family in Nepal before they obtained permission to settle in the United Kingdom. The Appellant returned from Malaysia when his contract ended in 2011 as noted by the judge at paragraph 18. The Appellant's parents did not arrive in the United Kingdom until 13 June 2012. He did not therefore relocate to Malaysia following his parent's settlement in the United Kingdom rather he returned from Malaysia and resumed cohabitation with them prior to their departure.
12. As conceded by Mr Walker the error is material because the Appellant's actions evidence not only a continuation of family life but of a family life which goes beyond normal emotional ties. It is accepted that the Appellant supported his family before they left Nepal and is also accepted that the Appellant's family supported him following their settlement in the United Kingdom. The Judge also accepted that the appellant's parents are in regular contact with him and, although this is not mentioned the decision, the evidence before the judge was that this regular contact included conversations between the Appellant and his mother almost every day.
13. In view of the accepted error of law I allow the appellant's appeal and set aside the decision of the First-tier tribunal.
14. In remaking the decision I take into account the positive findings in the decision of the First-tier tribunal. I add to those positive findings the

matters referred to above and in doing so I find that the Appellant continues to enjoy a family life with his parents and that this is a family life that goes beyond normal emotional ties in that there is a mutual dependency that has existed for many years. There is evidence of this mutual dependency in the fact that the Appellant travelled away from his home in Nepal to obtain employment to help support his parents whilst they remained in Nepal. This dependency continues but has been reversed in that since their settlement in the United Kingdom the Appellant parents now support him in Nepal. The appeal against the decision to refuse entry clearance is allowed on human rights grounds.

Summary of decision

15. Appeal allowed. The decision of the First-tier Tribunal is set aside.
16. I remake the decision of the First-tier Tribunal and I allow the Appellant's appeal against the Respondent's decision to refuse entry clearance on human rights grounds.

Signed



J F W Phillips

Deputy Judge of the Upper Tribunal

Date: 31 July 2019