



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

Appeal Number: HU/14475/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 November 2019**

**Decision & Reasons Promulgated  
On 25 November 2019**

**Before**

**MR JUSTICE NICOL  
UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**TIJAN CHHANTYAL**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Balroop, Counsel

For the Respondent: Ms Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant has appealed against a decision of First-tier Tribunal ('FTT') Judge Iqbal sent on 12 June 2019, dismissing his appeal on human rights grounds.

**Background**

2. The appellant is a citizen of Nepal, born in 1971. His application for entry clearance as an adult dependent child of his mother ('M'), a widow of a former Gurkha soldier, was refused by the respondent in a decision dated 13 June 2018.

### **Appeal proceedings**

3. The FTT heard oral evidence from M and took into account the written evidence adduced on behalf of the appellant. The FTT made two key findings: (i) there was no family life for the purposes of Article 8, ECHR between the appellant and M; (ii) in any event, the interference with that family life was not disproportionate. The FTT therefore dismissed the appellant's appeal on Article 8 grounds. The appellant relied upon two grounds of appeal, challenging each of these findings.
4. FTT Judge O'Brien granted permission to appeal, observing in relation to (i) that there was an arguable contradiction in the FTT's findings on family life; and (ii) that when addressing proportionality the FTT left out of account the relevant factor of historic injustice.
5. The respondent filed a helpful Rule 24 notice. Significantly, the respondent conceded that, as submitted by the appellant in ground (ii), in omitting historic injustice from the proportionality exercise, the FTT erred in law but the SSHD submitted that this error was not material because the FTT was entitled to find an absence of Article 8 family life. The respondent therefore continued to resist the appeal in relation to ground (i).

### **Hearing**

6. At the hearing before us, Mr Balroop accepted that the appeal entirely turned on whether ground (i) was made out. He relied upon a skeleton argument that sought to amplify the grounds of appeal. However Mr Balroop accepted that in essence ground (i) relied upon two submissions: the FTT took irrelevant matters into account when considering whether family life exists and applied too high a threshold to the determination of family life.
7. Ms Jones relied upon a rule 24 notice. This conceded that ground (ii) contained an error of law. The FTT failed to take proper account of the 'historic injustice' involved, when addressing proportionality. Ms Jones submitted that this error of law was immaterial because the FTT made no error of law regarding family life.
8. We reserved our decision, which we now provide with reasons.

### **Error of Law Discussion**

9. The FTT carefully considered all the available evidence before reaching findings of fact entirely open to it. Mr Balroop was correct to place no reliance upon the observation in the grant of permission to

appeal decision that there was a contradiction in the FTT's findings on family life. At [35] the FTT was considering Article 8(2) on the alternative basis that it was wrong in reaching the conclusion at [31] in relation to Article 8(1).

10. The FTT properly directed itself to Rai v ECO [2017] EWCA Civ 320 and other relevant authorities at [19]-[21], and the appropriate approach to the determination of family life pursuant to Article 8(1), ECHR. We do not accept that the FTT required a threshold that was overly high or that irrelevant matters played any material role in the family life assessment. Whilst the FTT noted that the appellant's mother made an active choice to remain in the UK that was not its focus. Rather, the FTT holistically considered all the factors in support of and against there being family life. The FTT summarised the evidence at [22]-[26] with the findings following from [27]. That does not mean that the FTT did not take all the relevant evidence into account when reaching the ultimate decision on family life. At [31] the FTT made it clear that "*the totality of the evidence*" was considered. The FTT was aware of and took into account the following matters:
  - (a) the appellant's father died in 2002 when he was only 18 and as such M was his only parent after this - see [1] and [24];
  - (b) M provided general support through regular communication and visits, together with financial support - see [25]-[26];
  - (c) the appellant's age (34) and history of independent study - see [27] and [31];
  - (d) the nature and extent of the claimed financial support provided by M to the appellant.
11. Contrary to the submissions in the grounds of appeal, the FTT carefully considered the oral evidence provided by M (see [12]-[14]) and was entitled to find that there was a paucity of independent evidence of financial support. It cannot be properly said that the FTT left out of account bank statements from a bank account in Nepal (containing M's widow pension payments) when the FTT expressly noted these at [29]. In addition, the FTT was fully aware that M gave evidence that she provided financial support to the appellant via friends through the Hundi system but was entitled to be concerned that there was an absence of supporting evidence from friends in relation to this.
12. Significantly, the FTT did not accept that M provided entirely reliable evidence. The FTT was entitled to draw adverse inferences at [30] from the mother's vague answer to why she had been unable to assist the appellant to set up a business in Nepal.
13. Having considered all the evidence in the round, the FTT was entitled to conclude that the appellant was living an independent life from his

mother and there were no more than normal emotional ties between them. In reaching this finding, the FTT clearly had the guidance in Rai in mind i.e. the support needed to be real, committed or effective (and not necessarily exclusive), having directed itself to those principles at [20]. The FTT simply did not accept the claimed dependency on the evidence available and did not accept that notwithstanding the difficult circumstances in Nepal, this particular 35 year old educated man was genuinely dependent upon M in any real or effective manner. In an enquiry as highly fact-sensitive as this one (see Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC) at [62], the FTT was entitled to reach the conclusion that in this particular case there was not family life for the purposes of Article 8(1).

### **Conclusion**

14. Mr Balroop has been unable to identify any material error of law in the FTT's decision, and the appeal must therefore be dismissed.

### **Notice of decision**

15. The FTT's decision does not contain a material error of law and we do not set it aside.

Signed: *UTJ Plimmer*

Date: 21 November 2019

Upper Tribunal Judge Plimmer