Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/24303/2018
& HU/24304/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 November 2019	**On 21 November 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

KEDAR DEWAN
MUNA DEWAN

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K McCarthy, instructed by Everest Law Solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, who are twins, are citizens of Nepal, born on 18 January 1981. They have been given permission to appeal against the decision of First-tier Tribunal Judge Smith dismissing their appeals against the respondent's decisions to refuse their applications for entry clearance.

2. The appellants applied for entry clearance on 6 September 2018 to settle in the UK as the adult dependant relatives of their father, an ex-Gurkha soldier, who was issued with a settlement visa on 10 March 2014 and who came to the UK on 25 April 2014 with his wife, the appellants' mother. The respondent considered that the appellants did not meet the requirements of paragraph EC-DR.1.1 of Appendix FM of the immigration rules and that they did not meet the requirements of the Home Office policy in Annex K, IDI Chapter 15, section 2A 13.2. The respondent went on to consider Article 8 of the ECHR but concluded that there was no established family life between the appellants and their parents and that Article 8 was not engaged, but that in any event the decision to refuse the applications was proportionate and did not breach the appellants' Article 8 human rights. The applications were refused on 15 November 2018.

3. The appellants appealed against that decision and their appeals were heard by First-tier Tribunal Judge Smith on 1 July 2019. The judge noted that the appellants had an older sister who came to the UK in 2011 and was married and that they had an older brother and a younger sister who lived with them in the family home in Nepal. The evidence before the judge was that none of them were employed and the male family members worked in the field owned by the family where crops were grown. They received cheques from the sponsor, from his Nepalese bank account. The judge observed that there were no photographs of the appellants and the sponsor and that there was no evidence of any relationship between them. Although he accepted that the sponsor travelled to Nepal to see his children, he considered the absence of evidence of the relationship between them to undermine the strength of their family life. The judge accepted that there was family life between the parents and children at the time when the sponsor and his wife left Nepal but concluded that the family life which currently existed was not anything more than the usual emotional ties between adult siblings and their parents. He therefore considered that the respondent's decision was not disproportionate and he dismissed the appeals.

4. The appellants sought permission to appeal to the Upper Tribunal against the judge's decision on five grounds: that the judge had acted unfairly in rejecting the evidence about ongoing contact between the appellants and their parents; that the judge had erroneously elevated the threshold of establishing family life under Article 8(1) by requiring there to be dependency; that the judge had taken immaterial factors into account when determining that Article 8 was not engaged; that the judge had failed to take account of relevant material in determining whether Article 8 was engaged; and that the judge had failed to consider the appellants' father's evidence and his explanation for the delay in making the application for them to join him in the UK.

5. Permission was granted by the First-tier Tribunal, essentially on the ground that the judge had arguably applied an elevated test in assessing the existence of family life in the context of historic injustice.

6. At the hearing Ms McCarthy addressed, and expanded upon, all five grounds in her submissions. Ms Jones responded, relying on the case of Ghising (family

life - adults - Gurkha policy) Nepal [2012] UKUT 160 and submitting that the judge had been entitled to make the findings that he did on the facts and the evidence.

Consideration and findings

7. The first ground asserts unfairness on the part of the judge by failing to give the appellants an opportunity to respond to the assertion that there was no contact between them and the appellants. It was Ms McCarthy's submission that there was such evidence, namely evidence of telephone contact and visits by the sponsors to Nepal. However the judge was entitled to draw his own conclusions from the evidence and to accord it the limited weight that he did and was not required to put each and every concern to the appellants. The judge accepted the relationship between the appellants and the sponsors, he accepted that there was family life at the time the sponsors departed for the UK, accepted that the sponsors had visited the appellants in Nepal and accepted that the appellants' father supported them financially. However he did not accept that there was a continuing relationship that amounted to family life for the purposes of Article 8(1) and reached that conclusion on the basis of the limited evidence before him, as he was entitled to do. He clearly had full regard to the evidence of the appellants and sponsors in their statements, referring to that evidence at [30]. Contrary to Ms McCarthy's reference to visits made by the sponsors to Nepal, the evidence in the statements was that the sponsors had visited only once, in February 2019, five years after leaving Nepal, as confirmed by the stamps in their passports. That was considered and accepted by the judge. Although the judge did not specifically refer to the evidence of telephone calls, the evidence described in the index to the bundle as records of Viber calls and messages, was barely legible and provided no proper details or evidence of contact between the relevant parties. Likewise, the three photographs produced simply showed the sponsors and appellants standing together, which is consistent with the judge's acceptance that the sponsors visited the appellants in Nepal. The judge plainly accepted that the parties were in contact but it is clear from his findings at [31] that he did not accept there was meaningful contact amounting to a relationship which would engage Article 8(1).

8. As for the assertion in the grounds and Ms McCarthy's submission that the judge applied the wrong test for assessing family life and wrongly required there to be dependency, it seems to me that the judge's assessment was entirely consistent with the guidance in Ghising which, at [61], endorsed previous authorities specifically referring to the need for additional elements of dependence. Ghising also emphasised the fact sensitive nature of each case and the judge's assessment was entirely consistent with that approach. The grounds criticise the judge for taking into account immaterial matters and for not considering material matters, but I find no merit in such assertions. The judge simply set out the facts as he was told them through the oral and documentary evidence, taking full account of the appellants' circumstances and status in Nepal, the circumstances of their parents' departure from Nepal and their relationship and contact with their parents. Having considered the

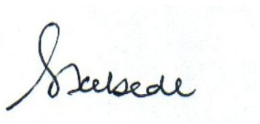
relevant facts and assessed the evidence, the judge then reached the conclusion that the relationship between the appellants and sponsors did not involve anything beyond the usual emotional ties between adult family members. There was no elevation of the threshold for establishing family life, as the grounds assert, but the proper test was applied. The judge was well aware of the sponsor's lengthy service as a Gurkha and the relevance of historic injustice and he assessed the family situation in that context, reaching a conclusion which was entirely open to him on the evidence before him.

9. For all of these reasons I find no merit in the appellants' grounds of challenge. The grounds are essentially a disagreement with the judge's decision and I fail to see why permission was granted in the first place. The judge's decision took account of all the evidence, was fully and cogently reasoned and was entirely and properly open to him on the evidence before him.

10. Accordingly I find no errors of law in the judge's decision. I uphold the decision.

DECISION

11. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeals stands.

Signed 
Upper Tribunal Judge Kebede Dated: 15 November 2019