



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/11870/2019 (V)

THE IMMIGRATION ACTS

**Heard at: Field House
On: 9 November 2020**

**Decision & Reasons Promulgated
On 12 November 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MANGESH RAI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Nnamani, instructed by Howe & Co Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant is a citizen of Nepal, born on 23 August 1982. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for entry clearance.

3. The appellant applied for entry clearance on 15 March 2019 to settle in the UK as the adult dependant relative of his father, an ex-Gurkha soldier, who was issued a settlement visa on 3 July 2012 and who came to the UK on 11 October 2012 with his wife, the appellant's mother. The respondent refused the application in a decision dated 29 May 2019.

4. In refusing the application, the respondent noted that the appellant was 36 years of age at the date of the application, that his parents had visited him in Nepal twice since migrating to the UK, in 2017 and 2019, and that he had lived apart from his sponsor for more than two years. The respondent considered that the appellant was in good health, educated, that there were no obvious factors preventing him from working in Nepal, that he had siblings in Nepal who had not applied to settle in the UK and was satisfied that he had close family ties in his country for social and emotional support. The respondent was, furthermore, not satisfied that the appellant was wholly financially and/or emotionally dependent on his UK sponsor. For those reasons the respondent considered that the appellant did not meet the requirements of paragraph EC-DR.1.1 of Appendix FM of the immigration rules and that he 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 appellant and his parents, but that in any event the decision to refuse the application was proportionate and did not breach his Article 8 human rights.

5. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Hamilton on 2 March 2020. The judge noted that the appeal was pursued only on Article 8 grounds, it having been accepted that the policy did not apply in the appellant's circumstances. Having heard from the sponsor, the judge considered that his evidence in relation to various matters was inconsistent and implausible, such that he had to conclude that he could not rely upon the sponsor's account of the appellant's circumstances in Nepal. The judge was not satisfied that the appellant had shown that he was financially dependent upon the sponsor or that their relationship went beyond the normal ties between a parent and an adult child. He concluded that the appellant had not shown that he could meet the requirements of Annex K or that he had an established family life for Article 8 purposes and he accordingly dismissed the appeal.

6. The appellant sought permission to appeal to the Upper Tribunal on two grounds, namely that the judge had failed to apply the appropriate legal principles in the assessment of whether Article 8 was engaged on the basis of family life and that the judge had made inadequately reasoned negative credibility findings in relation to the sponsor's evidence.

7. Permission was granted by the First-tier Tribunal, essentially on the first ground.

8. The matter then came before me and both parties made submissions.

9. Ms Nnamani focussed on the first ground and submitted that whilst the judge, at [32], had set out the correct legal principles in assessing whether there was family life between the appellant and his parents at the time his parents left Nepal and since that time, as set out in the case of Rai v Entry Clearance Officer, New Delhi [2017] EWCA Civ 320, he had failed to apply those principles. The judge made no finding on family life at the time the appellants' parents left Nepal. He had, however, made findings which were consistent with an ongoing relationship, namely the visits made by the appellants' parents, the money transfers and the regular communication between them, which were sufficient to show that there was an established family life that had been maintained since 2012, in accordance with the principles set out in Rai, Gurung & Ors, R (on the application of) v Secretary of State for the Home Department [2013] EWCA Civ 8, Ghising (family life - adults - Gurkha policy) Nepal [2012] UKUT 160 and Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. As for the second ground, the judge, rather than focussing on the relevant issues and positive aspects of the case, was distracted by matters which were not relevant, such as the sponsor's health, whether the appellant was working and the thriving tourist industry in Nepal and other negative aspects. The judge's decision ought therefore to be set aside.

10. Ms Everett submitted that there was no material error of law in the judge's decision. The judge concluded, at [58], that he was not satisfied as to the appellant's circumstances either when the sponsor came to the UK or at the present time and therefore he did address his mind to the situation when his parents came to the UK. Although there were mixed findings made by the judge, ultimately he found that there was a lack of evidence to show that there was an ongoing family life.

11. Ms Nnamani submitted, in response, that the judge had failed, at [58], to consider whether the evidence showed real or committed or effective support. The judge did not say why the monthly remittances were not sufficient to show financial support, nor why the visits and the communication did not amount to family life.

Consideration and findings

12. The case for the appellant is that the judge set out the relevant principles in Rai for assessing whether family life was established for the purposes of Article 8, but then diverted his attention to other, less relevant matters, and did not apply the relevant principles or give weight to the relevant issues and the positive aspects of the evidence. However I do not agree that that is the case.

13. As accepted, the judge set out the relevant principles at [32]. It is clear that he went on, at [33], to explain what he had to do in order to apply those principles and to make an assessment of whether family life existed at the relevant times. At [34] the judge, quite properly, considered that it was reasonable to expect a 37 year old man who, even on his own account had lived apart from his parents for about seven years, to have developed a life independent of his parents. As such, he went on to consider whether the

appellant had provided a plausible explanation as to why that was not the case and he proceeded to consider the appellant's circumstances in order to do so.

14. At [35] to [48] the judge considered the appellant's background in terms of his living circumstances, employment and education, all of which were relevant to the question of his dependency upon his parents. He gave cogent reasons, at [35] and [36], as to why he accorded limited weight to the documentary evidence relied upon to show that the appellant remained unmarried and unemployed and at [37] to [41] he assessed, and made adverse observations about the sponsor's evidence in that respect. At [42] to [46] the judge noted inconsistencies in the evidence about the appellant's address and living circumstances, together with concerns about the sponsor's evidence that he paid the appellant's rent. At [47] to [48] the judge considered the sponsor's medical issues and appears to have had concerns, from that evidence, as to the claim that the family was living in poverty. Clearly the judge had reservations in regard to all these matters.

15. Having considered the evidence of the appellant's circumstances in Nepal, the judge went on to consider the question of communication and the financial and emotional dependency between the appellant and his parents. The appellant's grounds, at [6], suggest that the judge's findings at [49] to [53] in relation to those matters, were sufficient to show "real or committed or effective support over a sustained period" amounting to family life, in accordance with the principles in Raj. However, I do not find that to be the case as it is clear that the judge also had reservations about those matters.

16. Whilst the judge accepted, at [50], that the appellants' parents' two visits to Nepal in 2017 and 2019 were evidence of a continuing relationship, he did not consider that that was evidence in itself of a relationship going beyond the normal parent/ adult child bonds. Whilst the judge accepted, at [51] and [52], that the appellant had received monthly payments from the sponsor from September 2018 to January 2020, he did not accept that that was evidence in itself of financial dependence and he noted the lack of independent evidence of any financial support between the sponsor's departure from Nepal in 2012 until September 2018. Whilst the judge accepted, at [53] and [54], that the appellant and sponsor were in regular contact by telephone, he gave limited weight to the evidence produced as to the extensive nature of the contact, noting that that level of contact had only begun recently and that the evidence overall did not show that there was emotional interdependence. At [55], the judge found no emotional dependency upon the appellant in terms of the sponsor's health care, given the length of time they had been separated and the availability of care from other sources in the UK. It is clear, therefore, that the positive aspects of the case were not as significantly weighty as the grounds and submissions suggest.

17. Having undertaken this detailed assessment of the appellant's circumstances and the ties between the appellant and his parents, the judge then drew everything together and set out his conclusions at [58]. It is clear that he found the sponsor to be an unreliable witness and he was not satisfied that he had been provided with a credible account of the appellant's

circumstances in Nepal, either at the time the sponsor and his wife left Nepal or at the current time. The judge accordingly did not accept that the required level of dependency had been demonstrated for the purposes of engaging Article 8 on family life grounds. I cannot agree with the assertion in the grounds or the grant of permission that the judge failed to resolve the relevant and 'paramount' issues of fact, as it seems to me that he undeniably did resolve those matters, with cogent reasoning, and applying the correct legal principles.

18. As I believe was accepted by Ms Nnamani, the second ground was dependent upon the first ground being made out. For the reasons given above, I find neither ground made out. In my view the judge undertook a full and careful assessment of all the evidence, he gave cogent reasons for according the evidence the weight that he did and he made properly reasoned findings in line with the relevant principles set out in Rai, Ghising, Gurung and Kugathas. Accordingly I find no errors of law in the judge's decision. I uphold the decision.

DECISION

19. 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.

Anonymity

I note that Judge Hamilton made an anonymity order on his own initiative, without any request being made. I do not agree that there is a need for anonymity in this case and I therefore discharge the order, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed S Kebede
Upper Tribunal Judge Kebede

Dated: 9 November 2020