



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17437/2018
(P)**

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgation
On 12th August 2020

Before

UT JUDGE MACLEMAN

Between

SANJAYA LIMBU

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

DETERMINATION AND REASONS (P)

1. The appellant is a citizen of Nepal, aged 30 at the date of the hearing in the FtT. The sponsor is his mother.
2. This determination is to be read with:
 - (i) The respondent's decision dated 4 July 2018.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Buttar, promulgated on 7 September 2019.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 30 March 2020.

- (v) The grant of permission by the UT, issued on 28 May 2020.
 - (vi) The UT's directions dated 30 June 2020, issued in amended terms on 3 July 2020, with a view to deciding without a hearing whether the FtT erred in law, and if so, whether its decision should be set aside; and giving parties the opportunity to make further submissions, including any submissions on whether there should be a hearing.
3. Time for submissions has expired. To date, no response is on file from either party.
 4. The UT may now fairly and justly decide the above questions without a hearing, in terms of rules 2 and 34.
 5. (There are 2 grounds, not 3; whether the FtT erred by refusing permission is not a relevant issue.)
 6. Ground 1 is that Judge Buttar erred by failing to say why family life between the appellant and the sponsor was "suddenly cut off on her departure and why the financial support she continued to send did not amount to dependency", and further erred by stating that the appellant failed to provide evidence of unemployment and failing to state "why she assumes that the *status quo* changed as soon as the sponsor left. Surely it follows that the appellant continued to be dependent on his mother when she left Nepal".
 7. This ground does not fully and fairly reflect the decision.
 8. At [40], the judge found the sponsor's evidence reluctant and self-contradictory about the availability of employment to the appellant, and a lack of evidence to show that he remained unemployed after he left. At [41], she found that their ties had not been over and above those to be expected between an unemployed adult living at home and his mother. At [42] she drew no inference that he expected to remain dependent upon her. The final sentence is, "It is on those facts that I find family life existed ... when the sponsor left Nepal". All such questions are matters of fact and degree. This was plainly a marginal case. On the facts found, it would not have been surprising if the conclusion on family life at the time of departure had gone the other way. That was the judge's starting point for whether family life continued to exist after she left.
 9. The resolution of that issue, at [43 - 48] is on these lines:

the sponsor left some money for the appellant, but the amount was unknown;

evidence of sponsor regularly sending money, but transfer receipts only from November 2018 to May 2019 (the hearing was on 13 September 2019);

evidence of regular contact by internet app, but significant inconsistencies over current circumstances, including the circumstances of siblings living nearby;

no evidence of inability to find work;

appellant living independently “albeit with some financial support”;

evidence “in the round does not demonstrate support which is real, effective and committed”;

relationship not now “beyond the normal ties of love and affection ... between adult children and their parents”.

10. The appellant cites no authority to support ground 1. The grant of permission refers to *Rai v ECO* [2017] EWCA Civ 320 at [41]. That case involved the question whether family life continued with an adult child after parents left Nepal. That was a question of fact for the tribunal, and respect was to be given to its evaluative judgment; but there had not been careful consideration of all the relevant facts, and the case was remitted for further decision.
11. I consider that the FtT in the present case reached a conclusion, as set out above, which was within its rational scope, after careful consideration of all relevant facts, for legally adequate reasons. Ground 1 does not show otherwise.
12. Ground 2 is that the judge focused on whether the appellant had or could secure employment in Nepal, overlooking that he was entitled to depend on the sponsor as a matter of choice, and that inability or unwillingness to obtain employment was irrelevant.
13. The appellant cites *Lim* [2015] EWCA Civ 1383 and *C/-423/12 Reyes*. Those cases are concerned with the nature of dependency under regulations. They are not concerned with whether family life exists so as to qualify for article 8 protection.
14. Ground 2 is only an inaccurate and irrelevant expression of disagreement.
15. The grounds together fail to show that the making of the decision by the FtT involved the making of any error on a point of law. That decision shall stand.
16. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman
7 August 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.