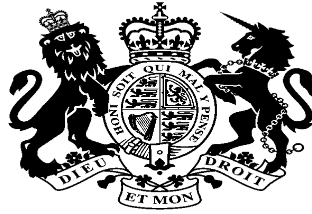

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001040
(HU/24546/2018)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 June 2022	**On 27 July 2022**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

B K
(ANONYMITY ORDER MADE)
Appellant

And

The Secretary of State for the Home Department
Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify him or members of his family. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. The parties at liberty to apply to discharge this order, with reasons. **I make this order because this decision refers to the mental health condition of the appellant and his mother.**

Representation:

For the Appellant:	Mr E Wilford, of Counsel, instructed by Everest Law Solicitors.
For the Respondent:	Ms A Ahmed, Senior Home Office Presenting Officer.

DECISION AND REASONS

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1. The appellant (hereafter referred to as "A1"), a national of Nepal born on 5 November 1989, appeals against a decision of Judge of the First-tier Tribunal Easterman (hereafter the "judge") promulgated on 27 September 2021 following a hearing on 29 June 2021 and 26 August 2021 held by a live link via C.V.P. by which the judge dismissed his appeal on human rights grounds against a decision of the respondent of 19 November 2018 to refuse his application of 9 September 2018 for entry clearance in order the join his father, Mr K K (hereafter the "sponsor"), and his mother Mrs. K, in the United Kingdom.

2. The judge heard A1's appeal together with the appeal of A1's brother, Mr BI K (hereafter referred to as "A2") (appeal number: HU/24549/2018), a national of Nepal born on 25 January 1991, against a decision also dated 19 November 2018 in near identical terms to refuse an application also dated 9 September 2018 for entry clearance in order to their parents on the same basis. At the time of their applications, A1 was 28 (nearly 29) years old and A2 was 27 years old. As at the date of the hearing before the judge, A1 was 31 years old and A2 was 30 years old.

3. The judge also dismissed A2's appeal. A2 did not make an application for permission to appeal against the decision of the judge.

4. At the hearing before the judge, A1 and A2 were represented by Mr R Jesurum, of Counsel.

5. The two appeals before the judge had been remitted by Upper Tribunal Judge Grubb for a *de novo* hearing in a decision promulgated on 1 March 2021 following a hearing on 4 February 2021. Judge Grubb heard the appeals of A1 and A2 against a decision of Judge of the First-tier Tribunal Bulpitt who dismissed their appeals in a decision promulgated on 9 December 2019 following a hearing on 19 November 2019.

6. The applications for entry clearance of 9 September 2018 were A1's and A2's second application for entry clearance on the basis of their family life as adult children of the sponsor. Their first such application was made on 20 August 2015 (see para 7 (v) below).

7. The following is further relevant background:

   (i) The sponsor is a retired Gurkha soldier settled in the United Kingdom. He served in the Brigade of Gurkhas between 12 February 1982 and 1 April 1995 when he was discharged with an exemplary record.

   (ii) In July 2009, the sponsor was granted leave to remain and settle in the United Kingdom. He arrived in the United Kingdom in November 2009 in accordance with that leave.

   (iii) In April 2011, the sponsor's wife and the younger brother of A1 and A2, K K Junior (born on 6 August 1996), were granted leave to remain and settle in the United Kingdom. They entered the United Kingdom in September 2011 in accordance with that leave.

   (iv) In 2014, A2 made an application for entry clearance in order to study for an ACCA course at BPP University College. That application was refused following a telephone interview with A2 on 26 August 2014. In that interview, A2 said that he had been working as an assistant accountant and earning 20,000 Nepalese

rupees. He also said that funds that were in his account had come from his father and his brother.

The following are certain questions and answers from A2's interview, taken from the transcript provided by the respondent in the appeal below and by Mr Wilford at the hearing before me:

Qn 23: Who pays studies?

Ans: My father is paying and my big brother will also contribute. I will also earn for my living if I get a chance to go there and study.

Qn 25: Employed?

Ans: Assistant account sir, my income is approx 20,000

Qn 30: Where 1.5 mil rupees on 28/05 come from

Ans: Not one source, borrowed from family, brother, father relatives, promising to return this after 2 years.

Qn 31: Do you still have this money?

Ans: Yes sir it is still on my bank sir

Qn 32: This money is for you to pay your expenses?

Ans: Yes sir

Qn 33: You said your father and brother would be paying costs and now you say you borrowed from extended family?

Ans: Tuition fee is from father and brother sir

Qn 34: I asked at q23, I asked "Who pays studies?" why not mention this?

Ans: The bank er sir the amount in the bank I borrowed from my father, brother and relatives but the amount I paid till now is only from my father and my brother,. I misunderstood your question.

It was not in dispute before the judge that the only brother that A2 could have been referring to at his interview as a source of funds for his studies was A1 because the younger brother in the United Kingdom was a student.

(v) On 20 August 2015, A1 and A2 made an application to enter and settle in the United Kingdom on the basis of their family life with their parents. The applications were refused on 16 September 2015. They appealed. In a decision promulgated on 22 March 2017 following a hearing on 25 January 2017, Judge of the First-tier Tribunal Hussain dismissed their appeals on human rights grounds. A1 and A2 sought permission to appeal against Judge Hussain's decision but permission was refused by Upper Tribunal Judge Macleman on 11 December 2017.

In his decision of 22 March 2017, Judge Hussain said (para 21) that, whilst he "*hesitantly*" concluded that, at the date of their applications for entry clearance, A1 and A2 were *"probably financially dependent on their sponsor"*, he did not accept that there was much emotional dependency.

(vi) As part of their applications of 20 August 2015 and 9 September 2018, the case advanced on behalf of A1 and A2 included that they had never worked and did not have independent funds; that they were reliant upon their father's financial support; and that they also lived in accommodation provided by him.

(vii) In relation to the appeal against Judge Bulpitt's decision, Judge Grubb decided that Judge Bulpitt had materially erred in law in his consideration of the sponsor's evidence in reaching his conclusion that the sponsor's evidence as to A1's and A2's circumstances could not be relied upon because he was aware of

A2's deceit. Judge Grubb considered that the fact that the sponsor had not been given an opportunity to dispute any contention that he was aware of A2's deceit was unfair. No doubt, this explains the reasons for the extensive cross-examination of the sponsor on this issue at the hearing before the judge.

(viii) In the appeal before the judge, A2 accepted that he had lied in his student application and that he had also lied in his first witness statement (dated 27 August 2019) submitted for the appeal before the judge. In his first witness statement, he said that he had never been asked at his interview about any employment and that "*there was nothing about me working in Nepal or any objection to the source of the money*" and he suggested that it was the agent who had been responsible for what was stated on his application form.

<u>The judge's decision</u>

8. There was evidence before the judge that A1 suffers from epilepsy, mood disorder and borderline personality disorder and that the sponsor's wife suffers from bipolar disorder for which she was treated in Nepal and hospitalised in the United Kingdom.

9. The judge heard oral evidence from the sponsor, his wife and their younger brother of A1 and A2, KK Junior. He set out in considerable detail the witness statements of A1 (paras 16-31), A2 (paras 32-45), the sponsor (paras 46-62), the sponsor's wife (paras 76-84) and KK Junior (paras 91-93). He also set out in detail the oral evidence and cross-examination of each of the witnesses before him beginning with the sponsor (at paras 63-73), followed by the oral evidence of the sponsor's wife (at paras 85-90) and KK Junior (at paras 94-99). He set out the submissions advanced before him at paras 100-129.

10. It is necessary to read the judge's entire decision in any consideration of his reasoning and assessment at para 130 onwards. My summary below of his reasoning and assessment cannot be a substitute for that exercise.

11. It is clear from paras 63-99 of the judge's decision that the three witnesses were cross-examined in detail about A2's student application and his admission that he had lied on that occasion when he had said that he was working as an assistant accountant earning 20,000 Nepalese rupees. It is clear that, when the sponsor was repeatedly asked whether A2 had lied in his student application and whether he had known that A2 had lied, the sponsor repeatedly sought to lay the blame on the agent for suggesting that A2 had been working. It is clear from the judge's decision that he was wholly unimpressed by the sponsor's evidence (see, for example, paras 73 and 152 of his decision).

12. At paras 130-133, the judge said as follows:

> "130. I have considered the Appellants' accounts and all the documents to which I have been referred and of course to the arguments made by both sides, I have reached the conclusions I have reached before commencing to write this part of the decision and it should not be thought because I express myself in any particular order that that means I have not considered the matter in the round prior to reaching my conclusions.
>
> 131. The starting point for this decision is in accordance with <u>Devaseelan</u> [20021 UKIAT 000702*, the decision of Judge Hussain, promulgated on 22nd March 2017 from the applications made by the Appellants to settle with their parents on 20th August 2015. However, I note Mr. Jesurum's comments and I take into account that the law has moved on somewhat since 2017, particularly with regard

to the definition of family life in Jitendra Rai, namely **real, effective, or committed support** being somewhat wider than the definition considered by Judge Hussain. In addition, I have more evidence, although some of it does fall into the category mentioned in Devaseelan, namely the evidence of communication. That which is subsequent to the previous hearing I treat it with circumspection.

132. I am particularly conscious that this matter appears to have become bogged down in the issue of what lies were told by [A2] and when, and whether the sponsor knew or has tried to conceal his knowledge of those lies.

133. I keep in focus that the real issue is whether it is shown for each Appellant that they have family life of a sort protected by Article 8, with their parents and younger brother, and if they do, whether there any other good reasons in either case to refuse them entry taking into account the historic injustice as dealt with in a long line of cases involving Gurkhas and their families."

(My emphasis)

13. The judge then assessed the evidence at paras 134-159 on internal pages 30-36. In the course of his assessment of the evidence, the judge also summarised and considered at paras 138-140 the witness statements that were before him from individuals who said that they knew A1 and/or A2 and who confirmed that A1 and A2 were not working.

14. At para 156, the judge said that he found that the family life which exists between A1 and A2 and their parents and their younger brother was no more than would be expected between adult children and their parents and that as a result Article 8 was not engaged. He then said:

"157. If I am wrong about that, and only if I am wrong, I find with regard to [A1] anything said by [A2], with regards to money from [A1] cannot be held against him, and as a result if there is family life, he would succeed as a result of the case law.

158. If I am wrong about article 8 not being engaged, and only if I am wrong with regard to [A2], I find that he has sought to mislead the Secretary of State on his own account on more than one occasion. Mr. Jesurum sought to argue that even if he had lied the normal parts of the Immigration Rules requiring him to be excluded would not apply, because this was an application outside the Rules and while that might be correct in one sense, in another it is in my view *[sic]* matter which should be taken into account because not only does [A2] not meet the Immigration Rules, against him is that he would be positively prohibited under them and that must be a matter *[sic]* can be taken into account in the proportionality balance, even if "immigration control" counts for little *[sic]* Gurkha cases. In my view, even if I am wrong in my findings above and there is protected family life in his case, when looking at the proportionality balance I would conclude that it falls on the side of the Secretary of State, on the basis of the lies previously told with regard to [A2]".

15. The judge's reasons for finding that A1 and A2 did not enjoy family life with their family life and younger brother may be summarised as follows:

(i) (para 135) A2's original witness statement dated 27 August 2019 talked in terms of the agent having been responsible for what went on to the form in 2014 and suggested that he was not asked any questions about employment in his interview and that it was only in his additional witness statement (dated 1 November 2019) that he confirmed that he had lied in the 2014 application, that he had tried to hide the lie and that what he had said at para 5 of his witness statement of August 2019 was also lies.

(ii) At para 137, the judge said:

"137. The difficulty when liars admit to lying in order to achieve an end is that it makes it particularly difficult to determine what can and cannot be relied on in any future statement seeking to attain the same end. For completeness I should say that the additional witness statement is dated 1st November 2019, that is after the date of [the sponsor's] witness statement which is 26th July 2019."

(iii) After quoting from supporting witness statements at paras 138-140 as I have mentioned earlier (at my para 13 above), the judge said, at paras 141-156 as follows:

"141. I have quoted from these letters lest it be thought I have not considered all the evidence, but I am still left with the proposition that in 2014 for no obvious reason [A2] volunteered that he was working as an assistant accountant and earned 20,000 Nepalese rupees at that work. Perhaps more significantly because it also affects the case of [A1], he suggested in that interview that he was supported not only by his father but by his brother, who we know has to be [A1], because his younger brother was still at school.

142. Not only does he say in that interview that he will be supported by his brother but in answer to question 34 "Who pays for your studies" he repeats what he said in answer to question 33 that the amount in the bank for the student application is borrowed from "my father, brother and relatives but the amount I paid till now is only from my father and my brother, I misunderstood the question" which refers back to question 23 where the answer was "my father is paying and my big brother will also contribute. I will also earn for my living if I get a chance to go there and study".

143. Mr. Archie [the respondent's representative] makes a very valid point which is that even if [A2] chose to lie about himself working, it is impossible to understand why he would have chosen to name his brother as supporting him financially if that was not the case, it would have been just as easy to restrict the person who put the money into the account to his father and/or to his father and others from whom his father or he had borrowed money. There really does seem to be no reason why he would have named his older brother, unless he was receiving or .had received funds from him.

144. While I understand Mr. Jesurum's arguments which are that [A2] lied in order to secure his student application and that whatever I hold against him I should not hold against [A1] and with regard to the lies told clearly I do not hold that against [A1] in the same way that I hold it against [A2], however it is important that [A2] has named [A1] as a source of money in 2014, when it is now important that neither brother in fact has any other source of money other than their father. And while I can see Mr. Jesurum's argument with regard to [A2] lying in order to improve his chances, it is impossible to understand how naming his brother unless it was true needed to happen at all.

145. I have no knowledge of how much 20,000 Nepalese rupees represents in terms of what work would be needed to be done to earn such money by an assistant accountant, although it is reasonably well-known that trainees who have not passed all their exams do do accountancy work in the United Kingdom, and are presumably paid for it, and thus it may be that while [A2] was studying he was also earning money.

146. **Returning then to what this case is actually about, which is whether there is real, effective or committed support such as to amount to the continuation of family life,** I also look at the other matters that are dealt with in the witness statements of [A2's] friends, daily football, gym and bodybuilding and according to the evidence at the hearing regular appearances at cafés, all suggest to me the sort of life that might well be led by young men in an independent manner.

147. Most of that evidence does in fairness refer to [A2], nonetheless I note that according to [A1] he may not take his medication, because he does not like to be told what to do by his younger brother. That equally does not suggest to me the behaviour of a totally dependent person, unable to go out because of his illness. Indeed, the evidence of his illness is no different to that which was previously before the Tribunal, and he has not been asked to specifically comment whether he was in a position to support his brother and put money into his account for the earlier application in 2014.

148. I note that [A1's] witness statement was taken in August 2019 and when I raised the matter with Mr. Jesurum as to why he had not made a further statement with regard to the matters that came to light as a result of his brother's admission that he had lied previously, he said it was not his practice to ask for these sorts of matters to be dealt with, in effect putting words into witnesses mouths *[sic]*.

149. That may be a very laudable approach but it was clearly going to be an issue and the formal absence of evidence from [A1] on the point does not to my mind advance his case.

150. Thus we have no evidence from [A1] other than his statement that he has never worked and that he is too scared to go out to suggest that he is not leading an independent life. It is unclear why having said that he is too scared to go out on his own in Nepal why he thinks that if he comes to the United Kingdom "if his condition allows" he will find work in the United Kingdom, that turned around *[sic]* rather suggests that when his condition allows, which seems to be generally, the same would apply in Nepal.

151. Seeking to deal with some matters which I do not find of any great importance while I heard clearly [Mrs. K] say the word perhaps in answer to whether [A2] had had work, in the context of the evidence as it was at that stage, I place no great weight on the fact that subsequently she did not remember saying it. I am conscious that all the questions go through interpretation and while I was surprised to hear the answer and equally surprised to hear her deny it, on reflection looking at her evidence as a whole I do not believe that she was admitting to the possibility of her son working, which is why, when confronted with what she had said, she did not recall or believe she had said it.

152. More difficult was the evidence of [the sponsor] and again while I accept some of Mr. Jesurum's comments with regard to his standing in the Brigade of Gurkhas and his otherwise good character, I cannot accept the evidence he gave to the Tribunal, even though Mr. Jesurum left no question unasked in an attempt to show that black was really white. Whether [the sponsor] really could not accept his son had lied although his son had accepted it himself, or whether it is because he believes it will have a detrimental effect on the appeal, or for whatever reason, the reality is that [the sponsor] would not accept that his son had lied and eventually, reluctantly, when faced with the fact that his son had accepted that he had lied, [the sponsor] had still wished to blame it on others. Of course I understand his wish to have his children in the United Kingdom, nonetheless as a result, not withstanding the high regard in which he has been held by others, I do not place much weight on his answers.

153. While there is undoubtedly evidence of communication, this is mainly post the previous decision, much of it is not in English, and what is, does not strike me as being anything more than I would expect between adult children and their parents.

154. While the evidence is that the appellants live on the monies provided by their father in what has been the family home, it is clear that [A2] is leading his own life, playing football, going to the gym and studying. I do not accept that he was not working when he made his previous application in 2014, nor do I accept, because it defies common sense, that his older brother did not provide some of the monies which were available to support that application, which means that he too has been working although he does not admit to it.

155. [A1] appears to be independent enough to decline to take his medication when told to by his younger brother, and I do not accept he is not leading an independent life in Nepal, I find the suggestion that [sic] it only takes his medication as his mother tells him to simply not true and very limited accounts we have both appellants' lives in Nepal are tailored simply to meet the mantra from the case law, and do not truly represent their positions."

(My emphasis)

Grounds and submissions

16. There are four grounds of challenge to the judge's finding that A1 did not enjoy family life with his parents. I set out the headings for each ground in inverted commas. The headings are mentioned because it may be thought that the headings do not relate to or correctly describe the explanation that follows the heading. The grounds are:

17. (Ground 1): "*Failure to give reasons*": It was illogical for the judge to find that the evidence of A2 as a confirmed liar was unreliable and yet give some weight to A2 having suggested in his student application that A1 had given A2 money for his student application. The judge erred in then finding, on the basis of the unreliable evidence of A2, that A1 had worked. There was simply no evidence that A2 had ever had any money and his student application was therefore rightly refused.

18. Ground 2: "*Giving inadequate reasons*": A1 suffers from a neurological condition (epilepsy), and two mental disorders (mood disorder and borderline personality disorder) (AB/238). He has been hospitalised due to injuries sustained in falls (AB/232). The judge erred in finding at paras 147 and 155 that the fact that A1 declines medication shows independence because: (i) the reason that A1 declines medication was not put to the witnesses; (ii) it is "*plainly possible*" that it was the result of his disorders, rather than a sign of "independence" that he declined medication; and (iii) even if it was purely A1's decision, that is not determinative of the issue of family life "*for the reasons below*" – which I infer refers to grounds 3 and 4.

19. Ground 3: "*Failure to apply the test* [sic] *the unchallenged evidence*": Ground 3 contends:

(i) The judge concluded that A1 is "*independent*". "*Dependence*" is inapposite and not the correct test. In Patel v ECO Mumbai [2010] EWCA Civ 17 it was held that family life falls "*well short of dependence*" and that the correct test is whether there was support.

(ii) Whilst A1 may well conduct much of his day-to-day life without the presence or involvement of the father, that was not indicative of an absence of ties and it was plainly not a choice but a product of the circumstances, in that, the sponsor-father had obtained the settlement that he should have had over 25 years ago; and that he faced a choice between taking it up but breaking up his family or losing it.

(iii) Furthermore, whether or not A1 had worked before was not determinative of whether he enjoys family life now with his parents. As the judge had acknowledged, the fact that A1 and his father were in near daily contact and that both A1 and his mother suffer from mental disorders were plainly capable of being "*support*", a question which it is contended the judge did not ask himself.

(iv) The unchallenged evidence of the sponsor was that he did not spend more time in Nepal only because he was unable to take more than seven days of holiday each quarter (witness statement, para 37). A1 is supported financially by his father and lives in his home. That is support which is "*real*" (as in real property), "*effective*" (at keeping a roof over his head) and "*committed*" in that it has lasted in time.

(v) The Strasbourg Court regards continued residence in the family home and the absence of the foundation of a family of one's own as presumptive of family life: AA v United Kingdom [2012] Imm AR 1 at para 49. That proposition has been approved in R (Gurung) v SSHD [2013] 1 WLR 2546 at para 46, and applied in Uddin v SSHD [2020] 1 WLR 1562 at para 40(iii). The feature absent here is cohabitation. The reason for that is that the father had to choose between the long-delayed settlement he was owed and his family.

(vi) The judge's findings may perhaps mean that A1 does not need to rely on his parents but that is not determinative of whether there is family life protected by Article 8(1): There is no authority for the proposition that support must be of

need. Reciprocal reliance is relevant: parents may come to rely on children (as contemplated in Patel at para 14).

20. Ground 4: "*Failure to consider the mother's position*": A1's mother suffers from bipolar disorder, for which she was treated in Nepal. She was hospitalised in the United Kingdom. Her unchallenged evidence was that:

i) She speaks with A1 and A2 daily (witness statement, para 8).

ii) Almost every time she speaks to her children she is in tears (witness statement, para 5).

iii) She breaks into tears when she is outside the house, and is approached by strangers out of concern (witness statement, para 9).

iv) She returns home to speak to A1 and A2.

Ground 4 contends that it is plainly arguable that the above is more than "*ordinary emotional ties*". The judge did not reject that evidence, or appear to give consideration to whether the mother's ties to A1 and A2 may constitute reciprocal support, given her vulnerability.

21. At the hearing, I heard submissions from Mr Wilford, who amplified the grounds, and from Ms Ahmed.

Assessment

22. I have carefully considered the grounds and the submissions advanced before me.

23. Given that ground 2 refers to and relies upon grounds 3 and 4, I shall deal with the grounds in the following order: ground 1, ground 3, ground 4 and ground 2.

Ground 1

24. Ground 1 is without any substance. It is clear from the judge's reasoning that he found A2's more recent evidence, that he had never worked, unreliable and that he found that A2 had been telling the truth when he said in his student application that he had been working as an assistant accountant earning Nepalese 20,000. In any event, even if the judge had found that the whole of A2's evidence, including what he had said at his interview in 2014, was unreliable (which I stress is not the case), the judge would nevertheless have been fully entitled to reach his own finding, on the basis of the evidence given by A2 that was most adverse to him in the current application, that that evidence represented the correct position. I reject the suggestion in the heading that the judge failed to give reasons. He did give adequate reasons for finding that A1 had worked, for example, that A2 had admitted to lying in his 2014 interview; that it defied common sense for A2 to have mentioned A1 as a source of money for his studies if that was not true; that A1 had not submitted a witness statement that addressed the matters that had come to light as a result of A2's admission that he had lied in his student application; that the sponsor's evidence was unreliable; and the other reasons set out at para 39 below.

Ground 3

25. In my judgment, it is clear that the judge considered the evidence of financial dependency because that was, in part, the case put forward on behalf of A1 and A2, i.e. that they had been financially dependent on the sponsor. He did *not* substitute the

correct test for one of dependency. To the contrary, at para 131, he specifically stated that the test was as stated in Rai, i.e. real, effective or committed support. At para 146, he repeated that test.

26. The remainder of ground 3 amounts to no more than an attempt to re-argue the case. There is simply nothing in the judge's decision that suggests that he decided that family life was not being enjoyed between A1 and his parents simply because the sponsor was not physically present in his life. He was plainly aware that they were living on different continents and that the issue in the case was whether they nevertheless enjoyed family life notwithstanding their physical separation. He was plainly aware that this was a case of a returned Gurkha who had taken up the right to settle in the United Kingdom, a right which had been denied for some years. He plainly took into account the evidence of communication between A1 and his parents – see, for example, para 153. At para 131, he had stated that he treated the evidence of communication that post-dated the decision of Judge Hussain with circumspection in accordance with the guidance in Devaseelan. He was aware that A1 suffered from mental health disorders and plainly took this into account – see, for example, paras 147 and 155.

27. Although I accept that the evidence of the mother, that she suffered from bipolar disorder, was not mentioned at para 130 onwards, the fact is that the judge set out her evidence from her witness statement in considerable detail at paras 76-84 and her oral evidence at paras 85-90. He said, at para 130, that he had considered all of the accounts of A1 and A2 and all of the documents and submissions.

28. There is nothing in the judge's decision that suggests that he considered that the fact that the sponsor had not spent more time in Nepal was evidence that A1 did not enjoy family life with his parents.

29. It is simply not the case that the judge considered that A1 had to show that any dependency was of necessity.

30. Accordingly, for the reasons given above, ground 3 is also without substance.

Ground 4

31. For the reasons given at para 27 above, I do not accept that the judge failed to take into account the evidence of A1's mother. Judges are not obliged to refer to every piece of the evidence in their assessment. In this particular case, the judge set out in detail the evidence of A1's mother in her witness statement as well as in her oral evidence. This is a very experienced judge who has clearly considered the appeals before him in a careful and detailed decision.

32. Ground 4 is not established.

Ground 2

33. The submission that it is "*plainly possible*" that the fact that A1 declines to take medication is the result of his disorders rather than a sign of independence, amounts to no more than an attempt to re-argue the case.

34. A1 did not give oral evidence. In his witness statement, A1 had said that he has medication to control his mood and other problems but without his mother he forgets to take them (para 27 of the judge's decision). At para 147, the judge noted that

according to A1, he may not take his medication because he does not like to be told what to do by this younger brother. This is the reason he gave in his witness statement for declining to take his medication when A2 asked him to do so. A1 did not suggest in his witness statement that it was because of his mental health condition.

35. In my judgment, the judge was entitled to consider the evidence that was before him. He was not obliged to have it put it to the live witnesses before him whether there was another reason for A1 to decline to take medication when his younger brother asked him to do so.

36. To the extent that ground 2 also relies upon grounds 3 and 4, I have dealt with grounds 3 and 4 above.

37. Ground 2 is therefore not established.

38. In reaching my conclusion that each of the grounds is not established, I rely on what I have said above, in relation to each ground, as well as the following:

39. It is clear when this very experienced judge's decision is considered as a whole, that he considered the appeal with care and in detail. He gave adequate reasons for reaching his finding that A1 had not established that he enjoyed family life with his parents which, in summary, were as follows:

(i) Although the judge accepted that the evidence was that A1 (as well as A2) lived on monies provided by the sponsor and what has been the family home (first sentence of para 154), he said (para 144) that it was impossible to understand why A2 mentioned A1 as a source of money in his 2014 interview if that was not true. Plainly, this led the judge to consider that it was evidence that A1 was employed at least in the past, contrary to the case that had been advanced. Plainly that cast doubt on his claim in his witness statement that he had never worked.

(ii) The judge noted that, once the fact that A2 had lied emerged, A1 had not provided a witness statement in which he commented on whether he was in a position to support his brother and put money into his account for the application in 2014. At para 150, the judge said that there was thus no evidence from A1 other than his statement that he has never worked and that he is too scared to go out to suggest that he was not leading an independent life. The judge said that, if he was too scared to go out in Nepal, it was unclear why he thought that, if he comes to the United Kingdom and "*if his condition allows*" he will find work in the United Kingdom. The judge inferred from that, as he was fully entitled to do, that when A1's condition allowed, which the judge noted seemed to be generally, the same would apply in Nepal.

(iii) The judge found the evidence of the sponsor unreliable.

(iv) The judge said that the evidence of communication was mainly post the previous decision, that much of it was not in English and that what was in English did not strike him as being anything more than he would expect between adult children and their parents.

(v) The judge found that the suggestion that A1 declines to take medication when told to do so by A2 and the very limited accounts of A1's (and A2's) live in Nepal *"were tailored simply to meet the mantra from the case law, and do not truly represent their positions*".

40. For all of the reasons given above, I dismiss this appeal.

Anonymity order

41. Although there was no application for an anonymity order, I decided to make an anonymity order given that this decision refers to the mental health disorders of A1 and his mother.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside. The appellant's appeal is therefore dismissed.

Signed
Upper Tribunal Judge Gill Date: 5 June 2022

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**