



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004947
First-tier Tribunal No
HU/54426/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

Ms ANITA GURUNG
(anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Gurkha Solicitors Ltd Solicitors
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

Heard at Field House on 4th August 2023

DECISION AND REASONS

Introduction

1. The appellant is a national of Nepal, born on 26 September 1980. On 20 April 2021 she applied for entry clearance as a dependent child of a former Gurkha soldier. Her father, Mr Purna Bahadur was granted settlement on 16 March 2011 and arrived on 5 April 2011. I will refer to him hereinafter as the sponsor
2. Her application was refused on 15 July 2021. The respondent found she did not meet the relevant immigration rule. The respondent took the view that at her stage in life she was not dependent upon the sponsor.
3. Immigration rule, EC-DR1.1(d) of appendix FM requires the applicant not to be over 30 years of age and have not lived apart from their sponsor from more than two years at the time of application and never lived apart from more than two years except for education.
4. Regarding the article 8 right to family life, the respondent said that her parents settled in the United Kingdom when the appellant was an adult

and they had been apart for nearly 11 years. The decision was not outweighed by consideration of the historical injustice suffered by Gurkha soldiers and their families.

The First tier Tribunal

5. Her appeal was heard by First-tier Tribunal Judge French on 29 March 2022. It was accepted that the immigration rules were not met. The judge heard from the sponsor. The judge found the evidence did not support regular payments to the appellant since 2011. The judge saw a discrepancy between the appellant's account in her application that she lived in a house owned by her sponsor whereas the sponsor told the judge the property was rented from her brother and he in turn gave her the money to pay this rent. The judge concluded by finding the appellant lived an independent life and had not a family life with the sponsor and her mother since 2011 and the refusal was proportion.

The Upper Tribunal

6. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan on 16 November 2022. It was arguable the judge misunderstood the evidence about financial support. The judge rejected the claim that her sponsor had been making regular payments to her, saying they would have expected documentation to confirm this. The appellant in her statement said she withdrew money from the sponsor's bank account to cover her living expenses. The judge said there was only evidence of three bank transfers since 2011. It was argued the judge had ignored a letter from the bank confirming she was the holder of the account since 31 March 2011. She was making withdrawals to pay others therefore she was not mentioned as the recipient.
7. Mr Walker, on considering the papers and the arguments advanced, accepted the judge erred in the assessment of the financial support and dependency from the sponsor. This was reflected in the consideration of the bank statements. In particular, there was a failure to properly consider the bank statements from 2011 as opposed to the entries relating to 2018 on. He accepted that this amounted to a material error rendering the decision unsafe. He agreed with the appellant's representative that if a material error of law were accepted the appropriate course would be to set the decision aside and to remit the matter back to the First-tier tribunal for a de novo hearing.
8. Having considered the points raised and the areas of agreement between the representatives I find a material error of law as indicated and set the decision aside. The appeal is to be relisted in the First-tier Tribunal for a de novo hearing.

Decision

The decision of First-tier Tribunal Judge French materially errs in law and is set aside. The appeal is to be returned to The First-tier Tribunal for a de novo hearing.

No: UI-2022-004947

First-tier Tribunal No

HU/54426/2021

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber