



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004887

First-tier Tribunal No: HU/52080/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 31st of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

MAHESHWARI SUNUWAR
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss T Srin dran, counsel instructed by SAM Solicitors
For the Respondent: Mr E Terrell, Senior home Office Presenting Officer

Heard at Field House on 19 December 2023

DECISION AND REASONS

1. This is an appeal against the decision of Judge Mailer (the Judge) in the First-tier Tribunal (FtT) who had the case on 6 September 2023. In the determination the Judge dismissed the appeal. The appellant sought, and was granted, permission to the upper tribunal.
2. The appellant is an adult national of Nepal, born 1 August 1981. She submitted an application for entry clearance as an adult dependent child of a former Gurkha on 10 October 2022. On the 24 January 2023 her application was refused by an entry clearance officer.

In the First-tier Tribunal

3. The appellant's case was that the appellant had been living in accommodation rented by the sponsor for the past 15 years. She is unmarried and unemployed (producing a certificate of unemployment from the local municipality), and she is both emotionally and financially dependent on the sponsor. The sponsor and his wife moved to the UK but continued to look after the appellant. Her case was that the sponsor buys her things that she needs, for example clothes and food. The appellant's case was that the sponsor and her maintain contact via international calling cards and mobile phone apps and that they speak to each other about their health and what they have done during the day.
4. The FtT received evidence of the amount of money that the sponsor provides to the appellant and heard evidence in person from the sponsor. He was cross-examined about his health and income and also stated in cross-examination that if the appellant were to come to the UK she would work in accordance with her abilities. His evidence was that the appellant could do a cleaning or labour job.
5. The Judge directed themselves on the meaning of family life under article 8 of the human rights convention and on the meaning of dependency in line with **Kugathas v SSHD** [2003] EWCA Civ 311, including reminding himself that family members need not be in the same country to establish art 8 rights. The appellant takes no issue with the way the Judge directed himself on the law, and it seems to me that the Judges self-directions are full and appropriate.
6. The Judge dismissed the appeal on the basis that the appellant had not proved she was financially dependent on the sponsor, that they did not have a relationship that went beyond that which is normal between an adult child and their parent, and that there were no exceptional circumstances warranting a grant of leave to come to the UK.
7. The appellant was given permission to appeal on the following two grounds:
 - a. That the Judge, in making his assessment at the appellant is unemployed, failed to give sufficient explanation in dismissing the unemployment certificate issued by the local municipality in Nepal. Alternatively, the Judge overlooked the certificate; and
 - b. The Judge erred in his assessment that there was no evidence of real, effective, and committed support for the appellant by her sponsor and did not apply the test correctly. The Judge concentrated on financial support to much.

In the Upper Tribunal

8. Before me I had the benefit of submissions on behalf of both the appellant and the respondent, along with a copy of the FtT decision, the grounds of appeal, and the skeleton argument and bundle that was available to the FtT.
9. The appellant submitted to me that the Judge had simply not addressed the certificate of unemployment or why he did not accept that the appellant was unemployed. The Judge did not consider that work which is available in the UK might not be available in Nepal and the unemployment certificate has not been challenged by the respondent.

10. With regards to the second ground, the Judge is said not to have addressed the reality of the appellant's circumstances, namely that when her mother died, the appellant became closer to her father. In rejecting the evidence on the appellant's unemployment status, the judge has allowed this to cloud judgment on the question of her relationship with her father.
11. The respondent pointed to the fact that the unemployment certificate was a year old by the time of the FtT hearing and the Judge's words are that there is no evidence to say that the appellant *remained* unemployed at that stage. There is nothing to say that the Judge overlooked the certificate, and he states that he has taken everything into consideration in the determination.
12. With regards to the relationship with the sponsor, says the respondent, the Judge has taken everything into account and has properly come to the conclusion that the appellant's relationship with the sponsor is no more than a normal relationship between parent and adult child.

Analysis and decision

13. I deal with the submission that the judge cannot dismiss evidence on the appellant's employability in Nepal because the Judge had the opportunity to "clarify the deficiency of evidence". A Judge has an opportunity to ask clarifying questions of a live witness. However, it is for the appellant to prove their case, and not (especially where an appellant is represented) for the Judge to identify weaknesses and then seek to make them good in clarification questions. If the Judge considers that there is something that needs clarifying, they might ask some questions. However, if the appellant has not adduced sufficient evidence to prove a point, it is not for the Judge to seek to make that shortfall good. That is the function of the appellant's representative.
14. I consider the submissions that the Judge did not sufficiently explain a rejection of the unemployment certificate. The determination does not refer in detail to all of the documentary evidence before the FtT, but nor would I expect the Judge to outline the documentary evidence in detail. The Judge does consider the witness evidence on the appellant's employability at [54] and [55]. At [56] the Judge uses the words "*There is no evidence that the appellant has remained unemployed, or is unemployable in Nepal, for the reasons given by her sponsor*". By that wording, the Judge plainly accepts that that, at some point in the past, the appellant was unemployed as claimed in the unemployment certificate. At [63] and [64] the Judge considers the evidence of financial support by the sponsor to the appellant. At [66] he notes that there is no evidence available to him on how the appellant supported herself in 2020-2021 when the sponsor could not travel to Nepal.
15. If a Judge accepts the truth of the matters stated in an unemployment certificate issued by a local authority in Nepal, that certificate by itself necessarily concerns a snapshot in time (the date of the certificate). It speaks for itself that, if the Judge is assessing the value of that evidence in relation to a date after the certificate is issued, the value of that evidence reduces over time. The Judge could have said this, but did not need to.
16. It is, in my judgment, sufficiently clear that the Judge has considered the evidence before him in the round with a view to assessing the appellant's employment status, and has come to the conclusion that the appellant has not

provided evidence of sufficient weight to prove her unemployment at the relevant time. It is not the case that the Judge has dismissed the unemployment certificate, instead the certificate is but one aspect of the evidence that Judge has taken into consideration.

17. The Judge does refer to the impact of the appellant's mother's death on the relationship between her and the sponsor. The Judge takes into consideration the sponsor's trips to Nepal and the evidence of communications between the sponsor and appellant after the death of the appellant's mother. The Judge concludes at [61] that the appellant and sponsor did provide 'emotional support and succour' to each other. The judge then considers the evidence of financial support provided and reminds himself at [68] of the level of emotional support he has found. The Judge has, before drawing any firm conclusions, considered both the financial and emotional support between sponsor and appellant. I do not agree with the submission that the Judge has based an assessment of the level of support disproportionately on the evidence of financial support.
18. The Judge might not have given the weight that the appellant would like to the change in relationship brought about by her mother's death, but the Judge has reached conclusions and given reasons which are justified by the evidence.
19. I am not persuaded that the judge has erred in his approach to the question of the appellant's unemployment status.

Notice of Decision

20. The determination of the First-tier Tribunal discloses no error of law.
21. I dismiss the appeal.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 January 2024