



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000344
First-tier Tribunal Nos:
HU/55716/2023
LH/06463/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 May 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GITA LIMBU
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mrs A Nolan, Senior Home Office Presenting Officer
For the Respondent: Mr M West, Counsel instructed by Everest Law

Heard at Field House on 6 March 2024

DECISION AND REASONS
(extempore)

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal dismissing the appeal of the respondent, hereinafter “the claimant”, a national of Nepal, against the decision of the Secretary of State refusing her leave to remain or enter the United Kingdom.
2. This is a case of a kind that colloquially can be called a “Gurkha case” following historic injustice. The claimant’s father served in the Brigade of Gurkhas, which service was not doubt appreciated, but at that time the immigration rules did not enable to establish himself in the United Kingdom and bring his family with him. It is possibly unusual and improbable to someone with no experience of Gurkhas cases that it could be argued cogently and seriously that a mature woman with her own family could indeed have the kind of family life with her father in the United Kingdom that would entitle her to remain with him on human rights grounds. We make the point that all Article 8 cases depend on their own facts but it is certainly the experience of this Tribunal that it is not unusual for relatives

of Gurkhas to be able to show that dependency exists between members of Gurkhas families well into adult life and beyond, but that is just an observation.

3. What is quite clear to us is that the judge was very aware that there were unusual features in this case. The judge was very aware that the claimant had a failed marriage behind her and therefore, on the facts of this case, had some experience of independent family life. The judge was also aware that the support that extended to the claimant came not only from her father, but other members of her family in the United Kingdom.
4. This was the point picked up particularly by Mrs Nolan in her presentation today. Although she relied on all of the grounds her main point seemed to be that the judge had not engaged with the fact that the dependency extended beyond the relationship between the claimant and her father. With respect we find this point did not assist the Secretary of State. What is quite clear from reading the Decision and Reasons as a whole is that the judge was satisfied that there was family life and dependency between the claimant and her father. That is sufficient for Article 8 to be “engaged” and Mrs Nolan was careful not to criticise the balancing exercise once the premise of engagement had been established.
5. We find that the judge was perfectly clear. At around paragraph 36 of the Decision and Reasons the judge found clear evidence of high degree of dependency. This was the conclusion that was reached only after considering the evidence as a whole and what might be thought of as the competing factors. This is a case where the judge has clearly considered the case, has clearly recognised difficulties or potentially incongruous features, has clearly resolved them in a way that is favourable to the claimant and has explained the decision. It is not suggested that the decision is perverse or otherwise could not have been reached. It may not have been the only way rationally interpreting the evidence but there is nothing wrong in law with the decision that has been made.
6. At paragraph 36 the judge said:

“This is clearly stated in the written evidence of the sponsor and the [claimant], that there is emotional dependency between them and the evidence strongly came across that there was real interdependence between the [claimant] and the sponsor. On the totality of the evidence before me I find that there is a real, committed and effective supportive relationship between the [claimant] and the sponsor which surmounts normal/ordinary emotional ties and which therefore amounts to a family life which engages the operation of ECHR Article 8”.
7. We find that the decision clearly shows a proper appreciation of the important facts, a proper approach to the law and is sufficiently clear for it to be apparent to a fair-minded reader why the decision was made. These are all reasons for allowing the appeal in the first place and we find no merit in the Secretary of State’s criticisms.
8. For all these reasons it is our decision to dismiss the appeal.

Notice of Decision

9. The Secretary of State’s appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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Dated 29 May 2024