IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003708

First-tier Tribunal No: HU/63164/2023
LH/02418/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8th November 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

CHANDRA GURUNG
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Moriarty, instructed by Everest Law Solicitors
For the Respondent: Mr Parvar, Senior Presenting Officer

Heard at Field House on 4 November 2024

DECISION AND REASONS

1. The appellant appeals with the permission of UTJ Loughran against the decision of First-tier Tribunal Judge Woolley. By his decision of 3 June 2024, Judge Woolley ("the judge") dismissed the appellant's appeal against the respondent's refusal of her application for entry clearance to join her mother in the United Kingdom.

2. The appellant is a Nepalese national who was born on 2 January 1979. The appellant's mother is the widow of an ex-Gurkha solider who was discharged before 1 July 1997. She and her husband were admitted to the United Kingdom in 2012, after the respondent's policies were changed in the wake of R (Limbu) & Ors v SSHD [2008] EWHC 2261 (Admin). This is therefore an appeal to which the line of authority including Gurung v SSHD [2013] EWCA Civ 8; [2013] 1 WLR 2546 applies.

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3. It is agreed by the parties before me that the judge erred in law in his assessment of whether there is a family life between the appellant and her mother. This decision is in correspondingly short form.

Background

4. The appellant applied for entry clearance on 13 September 2023. She stated that she was divorced and that she wished to join her mother in the United Kingdom. She gave her own details as well as those of her mother and father.

5. The respondent did not accept that the Immigration Rules were met, or that the appellant's exclusion from the United Kingdom would be in breach of Article 8 ECHR, as she did not accept that there was a family life between the appellant and her mother. When she reviewed that decision following the appellant's Appeal Skeleton Argument, she was not prepared to reverse or revise it.

The Appeal to the First-tier Tribunal

6. The appellant's appeal came before the judge, sitting remotely on 31 May 2024. The appellant was represented by Mr Wilford of counsel. The respondent was represented by a Presenting Officer (not Mr Parvar). The judge heard oral evidence from the sponsor and from the appellant's brother. The advocates made submissions before the judge reserved his decision.

7. In his reserved decision, the judge did not accept that the appellant and the sponsor enjoyed a family life together. He noted, amongst other matters, that the appellant had been married for twenty years or so and had been living with her husband, a plumber, until 2022. They had a daughter together, who was born in 2000. The marriage had broken down at that point and the appellant had returned to live in the home in which she had been raised by her mother and father. It was accepted on all sides that the sponsor sent money to Nepal to support the appellant.

8. Having concluded that the appellant could not meet the Immigration Rules, the judge turned to consider whether there was a protected family life between the appellant and the sponsor. He concluded that there was not, for the following reasons:

> The appellant cannot therefore argue that she was dependent at the time her parents left for the UK and that this situation was continuous to the date of application. Her dependence, I find, ended when she was married in 1997/8 and did not exist for all the time of her marriage. Her argument is that dependence has been re-established from 2023 onwards. I accept that the appellant has moved back to the family home and that the sponsor is sending her remittances on which she relies. The Court of Appeal in Gurung however accepted the conclusions of the FtT that financial support was expected in Nepalese culture and that for family life to exist emotional dependence must also be shown (para 48). The appellant has been married and had a daughter with whom she still lives. In Ghising No 2 at para 61 the Upper Tribunal accepted, following AA v United Kingdom that a "significant factor will be whether an adult child has founded a family of his own". In Gurung it was observed that "an adult child (particularly if he does not have a partner or children of his own) may establish that

> he has a family life with his parents" The appellant has a child of her own, and lives with this adult daughter in a family unit. I have noted the social media record at pages 57 – 91 of the bundle but this is merely a record of calls between the appellant and "my mom" and does not demonstrate any emotional ties. I find that the appellant has not established that she has sufficient emotional dependence on her parent so as to constitute family life. There has been one visit of the sponsor in 2023 for 28 days but I do not accept that this can evidence any emotional tie beyond the normal. I find that the appellant's emotional dependence on her mother ended in 1997/8 when she married, and she has not shown that such emotional dependence has been re-constituted in the limited time since 2022 when she left her husband. As a 44 year old woman I find that her emotional ties have remained on her daughter and not on her mother. I fully accept Mr Wilford's submission that emotional ties with her daughter do not preclude emotional dependence on her mother. On all the evidence however I find that she has not demonstrated sufficient emotional ties to her mother so as to constitute family life.

9. The judge then considered whether the interference with the appellant's 'potential private life' in the United Kingdom was in breach of Article 8 ECHR. He concluded that it was not, for reasons which I need not rehearse or reproduce in this decision.

The Appeal to the Upper Tribunal

10. The grounds of appeal advanced by Mr Wilford advanced two arguments: (i) that the judge had overlooked material matters in concluding that there was no family life and (ii) that the judge had misdirected himself in law or failed to give adequate reasons in concluding that the appellant's relationship with her own daughter had displaced her family life with the sponsor.

11. Permission was refused at first instance by Judge Aziz but granted on renewal by UTJ Loughran.

12. There is no rule 24 response from the respondent. That is unhelpful and unfortunate, given that Mr Parvar indicated at the outset of the hearing that he accepted that the judge's decision was vitiated by legal error and could not stand.

13. I consider Mr Parvar's concession to be properly made. The point made in ground one is that the judge failed to evaluate the evidence before him in deciding that the requisite level of emotional dependence between the appellant and the sponsor was absent. Although the judge noted that there was contact between the appellant and the sponsor, he failed to note or to evaluate what was said by the appellant and the sponsor about that contact. The appellant, for example, had said in her statement that she was worried about her mother, who she described as 'fragile' and on the 'verge of collapsing anytime'. The appellant's brother had described in his statement how the sponsor was kept awake worrying about the appellant, and that she was unlikely to survive much longer. He stated that the sponsor's last wish was that she was reunited with the appellant in the United Kingdom.

14. This evidence, together with the remaining matters described by Mr Wilford in ground one, went to the quality of the relationship between the appellant and the sponsor. As contended in this ground, however, the analysis undertaken by the judge was of a more quanititative nature. He noted that there was 'merely a record of calls' and that there had been a number of visits, but he failed to evaluate the evidence which was given orally and in writing about the nature of the relationship to which those calls and visits related. I accept Mr Parvar's concession that the judge erred in law in failing to have regard to those matters in deciding that there was inadequate emotional dependence for there to be a family life.

15. There is of course no requirement for the judge to refer to every piece of evidence, and it is to be assumed that a judge will have taken account of the sea of evidence before him: Volpi v Volpi [2022] 4 WLR 48, at [2](iii). Here, however, the evidence to which I have referred above was the flesh on the bones of the evidence to which the judge did refer. The failure to refer to it gives every indication that he failed to consider it, since the crux of the case was to be found in the evidence of contact, visits and remittances together with the reasons given by the appellant and the sponsor for those aspects of the relationship being present between a divorced woman in her forties and her mother. If the judge took what was said into account, he gave no adequate reasons for rejecting it, or for concluding that it did not meet the irreducible minimum of what family life entails.

16. It having been conceded by Mr Parvar that the decision of the judge could not stand, I asked the advocates what relief was appropriate. They both invited me to set aside the decision of the First-tier Tribunal and to remit the appeal to the FtT for hearing afresh by a judge other than Judge Woolley. I note that there will be oral evidence from the sponsor and the appellant's brother and that an interpreter will be necessary. I take account of the fact that the hearing will be *de novo*. In all the circumstances, I accept that the proper course is to remit rather than to remake the decision on the appeal in this Tribunal. In so finding, I have taken account of the decisions in AEB v SSHD [2022] EWCA Civ 1512; [2023] 4 WLR 12 and Begum (remaking or remittal) Bangladesh [2023] UKUT 46; [2023] Imm AR 558.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside that decision and remit the appeal to the FtT to be heard afresh by a judge other than Judge Woolley.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2024