Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07111/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 October 2017	**On 31 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BHE KUMARI PUN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer
For the Respondent: Ms E Lagunju, Counsel instructed by Howe & Co Solicitors

DECISION AND REASONS

1. The appellant is a single woman from Nepal. She applied for entry clearance to the UK as the dependent adult daughter of her father in 2010 which was refused. Her father was granted leave to enter the UK on 3 August 2009 for the purposes of settlement on the basis of his past service

with the Brigade of Ghurkhas, and her mother was also granted entry clearance in 2010 as his dependent spouse. The appellant and her siblings had their 2010 applications refused in part apparently because their parents were still living in Nepal at the time which, on the face of it, appears to be a somewhat confused and circular argument.

2. The appellant made a new application for entry clearance on 29 July 2015 which was refused on 4 September 2015 and the grounds of refusal were as follows. First, that she was over 36 at the time she had made that application and as a result did not meet the requirements for settlement under Appendix K to the Immigration Rules because the cut off threshold age for such applicants was 30 years. Second, the Entry Clearance Officer was not satisfied that she was financially and emotionally dependent upon her sponsor father. Third, the Entry Clearance Officer was not satisfied that she had any personal circumstances by way of incapacity or medical condition or disability that prevented her from living her life in comfort in Nepal as an independent 36 year old who had always lived in Nepal, and who had a property available to her by way of a family home that appeared to meet all of her needs, and who also had siblings and other family members living in Nepal to whom she could look for emotional support.

3. The appellant's appeal came before Judge Courtney in the First-tier Tribunal on 9 January 2017 and it was allowed, in a decision promulgated on 18 January 2017, on Article 8 grounds. The respondent applied to the Upper Tribunal for permission to appeal, which was granted by way of a decision of Judge Lambert on 7 August 2017 and thus the matter comes before me.

4. Before me Mr Clarke accepts that the grounds of the respondent's challenge are effectively a perversity argument, rather than a challenge to the adequacy of the reasons given by Judge Courtney for her decision. Certainly Judge Courtney's decision is a careful one and a detailed one and it is not suggested before me that she overlooked any relevant evidence or took into account any irrelevant evidence.

5. If one looks at the position as it was in 2009 and 2010 when the appellant's first application for entry clearance was made and refused the position was this: the appellant lived as she had always done with her siblings who like her were unmarried and living in the family home with their parents. She was then aged about 29. I think I can take judicial notice of the fact that it is a cultural norm in Nepal as in a number of other countries for unmarried adult daughters to continue to live in the family home with their parents until the time comes when they do marry and then leave. At the age of 29, and living in such circumstances, few judges would oppose the argument that it would be impossible for the child to have a subsisting family life with their parents. The jurisprudence that began with Ghising followed by the Court of Appeal decisions in Singh [2015] EWCA Civ 630 and PT [2016] EWCA Civ 612 makes it clear that there is no bright-line rule that a child living with their parents who

reaches the age of maturity and adulthood ceases at that point to enjoy family life with their parents, nor that their parents cease to enjoy family life with them. There may come a point where that "family life" ceases as a result of a supervening event such as marriage, and there may come a point in time where that erodes. Cases are undoubtedly fact-sensitive, but there are no bright-line rules.

6. Judge Courtney, having analysed the evidence before her, was satisfied that in 2009/2010 the appellant did enjoy family life with her parents and siblings. I can see no fault with that finding. It is adequately reasoned, and it was plainly open to her upon the evidence before her. The real thrust of the respondent's challenge before me is to the conclusion that family life persisted and subsisted, notwithstanding the decision of the appellant's elderly parents to leave Nepal for the UK and that it still subsisted and persisted, both at the date of the decision on the fresh entry clearance application she had made when it was refused on 4 September 2015 and indeed at the date of the hearing before her on 9 January 2017. As I say, that challenge is effectively one of perversity and as such it does of course necessarily import a high threshold.

7. In my judgement that threshold is simply not reached in this case. Judge Courtney's decision does not stop at analysing the position as it was when the family all lived together in Nepal in 2009/2010, but she also analysed the evidence as to what had happened since. She was entitled to ask herself the question of whether the 2009 application should have succeeded, as indeed it is now clear that it should have done. Moreover she did not fall into the trap of deciding the appeal simply on the question of whether the sponsor had from time to time sent some money back to Nepal, or even whether there was a real, as opposed to a contrived, financial dependency at any given date. She did look at the evidence of remittals of money to Nepal and the provision of the family home to the appellant as a place to live, but she looked at that evidence in the context of the evidence as to the nature of the relationships that existed, and persisted, between the various members of the family. She was entitled to accept the sponsor parents' evidence as honest and accurate. She accepted the evidence of the declining health of the appellant's parents, and their increasing frailty, and she looked at their dependence upon their daughter in their declining years as well as her dependence upon them over the years, because of course the nature of the Article 8 appeal required the judge not simply to focus upon the position of the appellant, but also to focus upon the Article 8 rights of her parents who living in the UK, are in declining health.

8. The real meat of the decision is to be found in paragraphs 22 to 27 of the decision and in my judgement that provides a more than adequate analysis and reasoning for the conclusion that family life between this adult daughter and her elderly parents existed when they left Nepal to settle in the UK, and had persisted down to the date of the hearing. I am not persuaded that the decision of the Court of Appeal in Singh or the decision of the Court of Appeal in PT (Sri Lanka) left the judge in a position

where she was unable to reach that conclusion, that is to say as the respondent's grounds suggest that it was a conclusion that was simply not open to her. In my judgement it is plain from the relevant jurisprudence that such a conclusion was open to her, even if it is possible that other judges would not have reached it. As I have indicated earlier there is no fault to be found in the reasoning or the analysis that Judge Courtney adopted, and since the finding was one that was open to her it is, in my judgement, unassailable. I therefore dismiss the appeal and confirm her decision to allow this appeal on Article 8 grounds.

9. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge J M Holmes