



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/12598/2015

THE IMMIGRATION ACTS

Heard at Field House

On 13th March 2018

**Decision & Reasons
Promulgated**

On 15th March 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**ANKU PUN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr S Jaisri, of Counsel, instructed by Sam Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nepal born in 1987. She applied for entry clearance to come to the UK as the dependent adult child of her mother, Mrs Krishna Kumari Pun, who is settled in the UK and is the widow of a former Gurkha Soldier. Her application for entry clearance was refused on 18th November 2015. Her appeal against the decision

was dismissed by First-tier Tribunal Judge Keith in a determination promulgated on the 16th May 2017.

2. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in the findings relating to dependency and also in failing to make clear findings relating to family life and Article 8 ECHR.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. It is argued in the grounds of appeal that the appellant had only been separated from her mother and sponsor for a period of six months at the date of decision, as the appellant's mother arrived in the UK with indefinite leave to enter on 6th May 2015. The application was made on 13th October 2015, and was refused on 18th November 2015. In these circumstances it is argued that family life existed between them and that the First-tier Tribunal erred in law in making a decision that failed to consider whether there was such family life. The Court of Appeal case of Rai [2017] EWCA Civ 320 clearly indicates it will be a key error of law to fail to consider this issue.
5. In oral submissions Mr Jaisri argued that there had been a failure to look at whether there was real, committed and effective family life, as required by the Court of Appeal in Rai. Mr Jaisri criticised the conclusions of the First-tier Tribunal with respect to the financial aspect of dependency as he said that the evidence was consistent with the appellant being a financially dependent of her mother. She had not been asked to comment at the hearing on the other people who had used her mother's bank account, and the analysis which led to the conclusion that the appellant was working was not sound. Mr Jaisri accepted that it was reasonable for the First-tier Tribunal to conclude that the sponsor did not know where the appellant lived as she had referred to a tenancy agreement where as the appellant had given a different address on the application, but insisted ultimately the accommodation picture was clear on the evidence before the First-tier.
6. Mr Jaisri argued that family life ought to have been found as the sponsor had funded the appellant's studies before travelling to the UK and as the sponsor and appellant had lived together at all times bar her period in Japan for studies and had financially supported her prior to leaving for the UK. It was only a period of 6 months before the appellant applied to join her mother, and since this application there was evidence of financial transfers, of telephone contact and a one month visit in March 2016.
7. Mr Duffy argued that the case had been put to the First-tier Tribunal in terms of the appellant being dependent on her mother and the mother

having made all the major decisions in her life. The First-tier Tribunal had made rational findings on the evidence before it given that this was what was said to be the case. It was rational to find that this was not the case when the sponsor did not know where the appellant lived, despite the issue being put to her at the hearing. It was also rational to find that the totality of evidence did not show that the sponsor fully supported the appellant financially when she was not aware of her expenses such as rent, and when the documentary evidence was not demonstrative of this. Lack of such basic practical knowledge was also a rational basis to find that although there was regular contact there was not more than normal social/emotional ties between the appellant and the sponsor.

Conclusions – Error of Law

8. It was accepted that the appellant could not meet the requirements of the Immigration Rules for adult dependent relatives. The only question was therefore whether the freestanding application of Article 8 ECHR permitted the appellant to succeed in her appeal, see paragraph 16 of the decision.
9. It is accepted by both parties, and myself, that if engagement of Article 8(1) ECHR was found, and that thus if there was a finding of family life between the appellant and sponsor, that the appeal should have been allowed in view of the historic injustice to Gurkhas as a refusal of entry clearance would, in these circumstances, be disproportionate. The sole question is therefore whether there were legal errors in relation to this assessment.
10. The First-tier Tribunal identifies that the first issue is whether family life exists between the appellant and her sponsor, see paragraph 40 of the decision. There is also a legally correct direction that whether family life existed should be assessed on the particular facts of the case in accordance with Ghising (family life – adults) [2012] UKUT 160 in the same paragraph.
11. The First-tier Tribunal clearly had in mind that the appellant and sponsor had only been separated for six months at the point of application for entry clearance bar a period of time when the appellant had studied in Japan in 2013, as part of the chronology of the case see paragraph 44 of the decision. It is accepted by the First-tier Tribunal that there is evidence of some payments between the sponsor and appellant, and also that it was likely that they had been in regular contact by telephone, see paragraphs 53 and 54 of the decision.
12. The First-tier Tribunal looked in a rational and legally correct way for evidence that supported the contention that family life existed between the appellant and sponsor because the sponsor took all major decisions in the appellant's life, as set out in the sponsor's statement at paragraph 26, see paragraph 46 of the decision. In this context the fact

that the sponsor did not know where the appellant lived and could give no details of how she budgeted for the appellant or how the appellant gained access to the sponsor's bank account, see paragraphs 46 and 47 of the decision, formed an entirely rational basis for the decision that any contact or financial support which was shown by the documentary evidence did not show the contended financial or emotional dependency beyond normal adult ties had existed at the point of the sponsor's departure to the UK and endured beyond that time.

13. The findings of the First-tier Tribunal were therefore proper ones that the appellant had not shown the sponsor to be providing real, committed and proper support sufficient to show the level of financial and emotional dependency which constituted family life.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 13th March 2018