IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003969

First-tier Tribunal No: HU/55528/2023
LH/04350/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th November 2024

Before

UPPER TRIBUNAL JUDGE HIRST

Between

PURNA PARSAD PUN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West, counsel instructed by Everest Law Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 30 October 2024

DECISION AND REASONS

1. The Appellant is a citizen of Nepal born on 1 March 1983. He appeals from the decision of First Tier Tribunal Judge Suffield-Thompson promulgated on 27 June 2024, dismissing his appeal on human rights grounds against the refusal of entry clearance.

Background

2. On 8 January 2023 the Appellant applied for entry clearance to join his father, the sponsor, who is a retired Gurkha. The Respondent refused the application on 20 March 2023 on the basis that the Appellant did not meet the requirements of paragraph EC-DR1 of Appendix FM as a dependent relative. The Respondent did not accept that there was family life engaging Article 8(1) ECHR between the Appellant and the sponsor.

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3. The Appellant's appeal was heard by the First Tier Tribunal on 27 June 2024 and dismissed in a determination promulgated on 28 June 2024. At the hearing the Appellant accepted that he did not meet the requirements of the relevant Immigration Rules. The Tribunal considered Article 8 outside the Immigration Rules but found that there was no family life between the Appellant and his father sufficient to engage Article 8 and did not go on to consider proportionality.

4. The Appellant sought permission to appeal to the Upper Tribunal, which was granted on all grounds by First Tier Tribunal Judge Fisher on 28 August 2024.

5. The appeal came before me at a hearing on 30 October 2024. Having heard submissions from the parties, I indicated at the end of the hearing that I was satisfied that the First Tier Tribunal determination involved the making of a material error of law and that I would provide my decision with reasons following the hearing.

Grounds of appeal

6. The Appellant appealed on four grounds:

    a. Ground 1: The First Tier Tribunal had made a material mistake of fact in its consideration of the financial support provided by the sponsor to the Appellant;

    b. Ground 2: The judge had erred by considering evidence which was not before the Tribunal;

    c. Ground 3: The judge had erred by failing to take into account relevant and material evidence and/or had failed to give adequate reasons for her findings; and

    d. Ground 4: The judge had erred in her consideration of emotional support when determining whether Article 8 was engaged.

Submissions

7. On behalf of the Appellant, Mr West began by noting that the question of whether there was family life engaging Article 8(1) was dispositive of the appeal. The judge was required to apply the test in *Kugathas v SSHD* [2003] EWCA Civ 31 which required her to determine whether there was real or effective or committed support between the Appellant and the sponsor. The threshold for engagement of Article 8 was not a high one: *AG (Eritrea) v SSHD*[2007] EWCA Civ 80.

8. Mr West addressed Grounds 1 and 3 together in his submissions, which expanded the detailed grounds of appeal. Financial support was central to the *Kugathas* test. The judge had made material errors of fact in considering financial support from paragraph 40 of the determination onwards. In particular, she had noted at paragraph 46 that there was a gap in the remittances sent by the sponsor to the Appellant "from 2021 to 2022" when in fact 7 remittances had been sent during that period; and she had failed to consider the sponsor's pension bank statements which showed that he had made cash withdrawals whilst visiting the Appellant in Nepal. The judge had also erred when she stated at paragraph 47 that there was no mention in the sponsor's witness statement or the Appellant's statements of his

receiving rental monies from the sponsor's property in Nepal, as both statements referred to the rental income and there was also a statement from the sponsor's tenant confirming that he paid rent in cash directly to the Appellant at the sponsor's request. Mr West submitted that the errors of fact were material to the judge's adverse credibility findings and to her conclusion that Article 8(1) was not engaged.

9. In relation to Ground 2, Mr West submitted that the judge's statement at paragraph 48 of the determination that "support by parents of adult children is to be expected in Nepali culture and it does not mean that family life exists" demonstrated that she had had regard to evidence which was not before the Tribunal without raising it with the parties, which was unfair.

10. On Ground 4, Mr West submitted that the judge had erred by not treating the records of contact between the Appellant and the sponsor as evidence of their intention to maintain communication and relied on *Goudey (subsisting marriage – evidence) Sudan*[2012] UKUT 00041 (IAC).

11. On behalf of the Respondent, Mr Parvar reminded the Tribunal of the Senior President's Practice Direction on reasons for decisions; the First Tier Tribunal was not required to identify all of the evidence relied on or to elaborate every step of its reasoning. He noted in relation to the issue of financial support that although there had been remittances during 2021-2022, there had been gaps. Although the wording of paragraph 46 was not helpful the judge was entitled to rely on the lack of evidence of any other source of income including the lack of any bank statements from the Appellant. In relation to the sponsor's pension account, the statement demonstrated withdrawal of money during 2024 and was not relevant to the years 2021-2022; if the Appellant had wanted the judge to place weight on it the matter should have been addressed in submissions at the hearing.

12. In relation to Ground 2, Mr Parvar submitted that whilst the judge's comment at paragraph 48 indicated that she had taken judicial notice of Nepali culture, it was simply a passing observation and was not material to the outcome of the appeal. The judge had made significant adverse findings about the credibility of the sponsor and the Appellant at paragraphs 39-42 and 44 of the determination, and paragraph 48 was not material given those findings.

13. On Ground 3, Mr Parvar acknowledged that the rental income had been mentioned in both the Appellant's and sponsor's witness statements. He submitted however that the judge was not required to refer to the statement from the tenant and that her failure to do so did not bear the significance placed on it by the Appellant. Looking at the determination as a whole it was evident that the judge had not been satisfied with the evidence presented to her, as shown by her highly damaging findings.

14. On Ground 4, Mr Parvar noted that the Appellant and sponsor had been separated for 18 years. The judge had not been able to consider the content of the untranslated WhatsApp messages and those were in any event insufficient to demonstrate family life over such a lengthy period. It was not contradictory for the judge to note that the sponsor's evidence did not refer to missing the Appellant. Overall, the Appellant's case was simply a disagreement with the judge's conclusions.

15. In reply, Mr West accepted that the question of Nepali culture might have been raised with the parties during proceedings and that Ground 2 would therefore fall

away. He emphasised that the errors of fact were material and went to core issues in the appeal: it was unrealistic to say that the judge would have reached the same conclusion absent the errors.

Conclusion

16. I remind myself of the principles to be applied by an appeal court to first instance findings of fact (cf *Volpi v Volpi* [2022] EWCA Civ 464 at [2]) and the role of the First Tier Tribunal as an expert tribunal. It is right, as Mr Parvar submitted, that the First Tier Tribunal judge was not required to set out in exhaustive detail her consideration of each piece of evidence, nor to explain each and every step of her reasoning, as is evident from the authorities cited in *HA (Iraq) v SSHD* [2022] UKSC 22 at [72].

17. However, having considered the determination as a whole I conclude that the judge made clear errors of fact when considering the issue of financial support. In particular:

    a. The judge's reference at paragraph 46 of the determination to "a gap in the remittances…from 2021 until 2022" indicated that the judge considered that there were no remittances from the sponsor to the Appellant during that time. That was plainly wrong, as the evidence showed that there had been seven remittances during the period;

    b. The judge's reference at paragraph 47 to lack of evidence of the rental monies paid to the Appellant by the sponsor's tenant was also plainly wrong. Contrary to paragraph 47, both the Appellant's and sponsor's witness statements expressly referred to the rental income (consistent with the oral evidence of the sponsor recorded at paragraph 50 of the determination) and that evidence was supported by an affidavit from the sponsor's tenant.

18. I do not accept that the judge's failure to consider or refer to the sponsor's pension bank statements and the cash withdrawals made during the sponsor's stay in Nepal amounted to a material error, as it is unclear whether her attention was drawn by either party to the statements, or that she was addressed on their significance, during the hearing.

19. However, I do accept that the Tribunal's errors as to the evidence of financial support were material to the adverse credibility findings made against the sponsor and the Appellant, in particular at paragraphs 39, 41 and 44 of the determination.

20. Those errors were material to the outcome of the appeal. There is a relatively low threshold required for engagement of Article 8(1) (*AG (Eritrea) v SSHD* [2007] EWCA Civ 801 at [28]), and the issue of financial support from the sponsor to the Appellant was a key part of the Tribunal's overall consideration of whether there was "real or committed or effective support" demonstrating family life sufficient to engage Article 8(1), as paragraph 50 of the determination indicates.

21. In relation to the issue of emotional dependency, the judge correctly directed herself at paragraph 40 that financial and emotional dependence were not separate tests. However, whilst she expressly referred to *Rai v Entry Clearance Officer* [2017] EWCA Civ 320 and *Ghising v SSHD* [2013] UKUT 567, her approach

to the question of whether there was emotional dependency between the Appellant and the sponsor did not reflect the less restrictive, fact-sensitive approach endorsed in *Rai* at [17-19] and *Ghising* at [56-62]. In particular, the judge's rejection of the evidence from the Appellant and the sponsor as "not compelling" indicates that she was applying an overly restrictive threshold, and her summary of the evidence at paragraphs 54-55 of the determination was not in my view a fair one given the contents of the witness statements. I accept the Appellant's submission that the evidence demonstrated regular contact between the Appellant and the sponsor and that the judge erred at paragraph 56 in rejecting the call logs. I consider that the judge erred in her approach to the issue of emotional dependency and that this was also material to her decision on the appeal.

22. In relation to Ground 2, Mr West acknowledged that the judge's comment about Nepali culture at paragraph 48 might have reflected discussion with the parties during the hearing and did not pursue the ground in the absence of a record of proceedings during the First Tier Tribunal hearing. In light of my decision on the other grounds of appeal I do not need to consider Ground 2 further.

Notice of Decision

The decision of the First Tier Tribunal involved the making of a material error of law and is set aside.

The appeal is remitted to the First Tier Tribunal for rehearing with no findings of fact preserved.

L Hirst

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 October 2024