



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

Appeal Number: IA/38951/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 25th June 2015**

**Determination Promulgated
On 29th June 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**KUSHAL POUDEL
(No anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Abbas, legal representative, instructed by Imperium Group Immigration Specialists

For the Respondent: Mr. C. Avery, Home Office Presenting Officer

DECISION AND REASONS

History of Appeal

1. The Appellant, who was born on 1st September 1989, is a national of Nepal. He married Gyanu Ghimive, in Nepal and entered the United Kingdom as her dependent on 11th January 2010, when she came here as a Tier 4 Student (General) Migrant. His leave to remain was subsequently extended until 31st July 2014, as her dependent but they separated in 2012 and on 21st May 2013 the Secretary of State for the Home Department informed him that his leave would be curtailed from 20th July 2013.

2. On 19th July 2013 the Appellant applied to vary his leave on the basis that he had established a private life in the United Kingdom for the purposes of Article 8 of the European Convention on Human Rights. He also submitted that he would be destitute and at risk of serious harm if removed to Nepal, which would give rise to a further breach of Article 3 of the ECHR.
3. The Secretary of State for the Home Department refused his application on 13th September 2013 on the basis that he was not entitled to leave to remain under the Immigration Rules on account of his private life. The Appellant appealed and his appeal was dismissed by First-tier Tribunal Judge Robinson in a determination promulgated on 16th October 2014.
4. The Appellant applied for permission to appeal against this decision on 21st October 2014. He submitted that the First-tier Judge had materially erred in law in paragraph 32 of his determination as the Appellant relationship with Mr. and Mrs Donoghue did amount to family life. He relied on the case of *MT (Zimbabwe) v Secretary of State for the Home Department [2007] EWCA Civ 455*. and submitted that dependency can be emotional and not merely financial. He also submitted that the “circumstances” and “shared experiences” were important in determining if family life comes within Article 8.
5. First-tier Tribunal Judge Saffer refused the Appellant permission to appeal on 4th December 2014 on the basis that the Respondent was entitled to find that no family life existed between the Appellant and Mr. and Mrs Donoghue and that in relation to his private life it would not be disproportionate to require the Appellant to leave.
6. The Appellant renewed his grounds to the Upper Tribunal. He also submitted that the First-tier Tribunal Judge had failed to appropriately consider the evidence that the Appellant regarded Mr. and Mrs Donoghue as his parents. On 20th March 2015 Deputy Upper Tribunal Judge Zucker granted permission to appeal, stating that it was arguable that the Judge erred in finding that there was no family life deserving of respect and he had, therefore, failed to adequately consider whether the Appellant’s removal would be proportionate.

Error of Law Hearing

7. At the hearing before me the Appellant submitted a small bundle, which mainly consisted of documents already before the Tribunal. In addition, it contained a supplementary witness statement by the Appellant and a travel alert from the UK Government which addressed the Appellant’s potential circumstances in Nepal after the recent earthquake. This was not evidence which I could consider during an error of law hearing.
8. At the hearing, Mr. Abbas argued that family life was engaged and that the First-tier Tribunal Judge had only considered the financial aspects and not the emotional aspects of the life the Appellant enjoyed with Mr. and Mrs Donoghue. In particular, he submitted that the Judge had erred in law in paragraph 33 where he found that the Appellant had established a close relationship but not a family life. He also relied on extracts from *MT (Zimbabwe)* and *Navaratnam Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31*. The Respondent then argued that the grounds were no more than a disagreement with the Judge’s decision and

the there was no familial basis for the asserted family life and noted that the Appellant had not even known Mr and Mrs Donoghue before 2010.

9. I have taken into account the fact that in *MT (Zimbabwe)* the Court noted that “the nature of the relationship [relied upon by an Appellant] should be very much a matter for her judgement – essentially, as the adjudicator herself said, a question of fact, bearing in mind that she heard live evidence, cross-examined”. In the current case the Judge’ determination and reasons and the record of proceedings in the file, confirm that the Appellant and Mr. Donoghue both gave oral evidence and that Mr. Donoghue said that the Appellant lived with him and his wife and was now part of their lives. The Appellant also said that Mr. and Mrs Donoghue were like parents to him as his own mother was dead and he was estranged from his father. This was acknowledged by the Judge in paragraphs 6(6) and 11 of his determination and reasons. He had also had the benefit of hearing live evidence at the hearing before him.
10. At paragraph 32, the Judge also noted that Mr. and Mrs Donoghue said that they treated the Appellant as one of their family and described him as one of their own sons. This was evidence of the emotional ties which existed between them and, therefore, it was not accurate to state that the Judge merely considered the financial, and not the emotional ties, which the Appellant had formed with Mr. and Mrs Donoghue.
11. Mr. Abbas also argued that if emotional ties had been established this was capable of amounting to family life even if the parties were not related to each other. However, I note that in paragraph 19 of *Kugathas* Lord Justice Sedley held that “neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life [for the purposes of Article 8 of the ECHR]”. At paragraph 25 of the same case Lady Arden then added that “in my judgment a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties”. In the present case, the Appellant was not even related to Mr. and Mrs Donoghue and relied primarily on his emotional relationship with Mr. and Mrs Donoghue. The Judge also found the Appellant was married, albeit separated, was in employment and lead an independent life. This did not suggest that there were any additional factors which could have given rise to a family life for the purposes of Article 8 even if the Appellant had been Mr. and Mrs Donoghue’s adult birth child.
12. In contrast in *MT (Zimbabwe)* there were a number of factors which did give rise to a family life between adult cousins. These were that the ties had arisen when the Appellant was still a child; she had been integrated into the family since childhood; young female adults remained living n a family setting and as adults they shared experiences in Zimbabwe. There were no such shared historical ties and dependency in the current case.
13. In addition, the Appellant’s representative was not able to direct me to any case in domestic law or the law of the European Court of Human Rights in which family life was said to have arisen for the purposes of Article 8 of the ECHR when there was no familial link between the parties of any sort.

14. For all of these reasons I am satisfied that there were no material errors of law in the First-tier Tribunal Judge's decision and findings and that it should not be set aside.

Conclusions:

1. The First-tier Tribunal Judge's determination did not include any material errors of law.
2. The decision should not be set aside and should stand.

Date: 25th June 2015

A handwritten signature in black ink that reads "Nadine Finch". The signature is written in a cursive style with a large initial 'N'.

Upper Tribunal Judge Finch