



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: OA/05436/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On November 16, 2015**

**Decision and Reasons
Promulgated
On November 19, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR SHEKHAR LIMBU
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant	Mr Wilford, Counsel, instructed by Kent Immigration and Visa Advice
Respondent	Mr Bramble (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Nepal. On March 3, 2014 the appellant applied for leave to enter on the basis of family life and the "Ghurkha" policy. The respondent refused the application but on March 31, 2014. The appellants appealed these decisions on April 22, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 but the respondent maintained her position following an entry clearance manager's review on August 20, 2014.

2. The appeal came before Judge of the First-tier Tribunal Mayall on January 14, 2015 but he refused the appellant's appeal under the "Ghurkha" policy and ECHR legislation in a decision promulgated on February 12, 2015.
3. The appellant appealed that decision and Judge of the First-tier Tribunal Lever found an arguable error in law based on finding that there was no family life between the appellant and his parents and the approach to proportionality and in particular Section 117B of the 2002 Act.
4. The respondent opposed the error and filed a Rule 24 response dated June 11, 2015.
5. The matter was listed before me for legal arguments.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

SUBMISSIONS

7. Mr Wilford submitted the Tribunal had erred by failing to recognise that the appellant and his parents enjoyed family life that went beyond mere emotional ties. The Tribunal had accepted the appellant was still supported by his parents and they had regular communications and up to the time the appellant's parents and sister came to the United Kingdom they had all been living as a family. He referred to the test to be applied as set out in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 and submitted the appellant had demonstrated that the support he received amounted to real or effective or committed support. The Courts in Ghising and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 00567 (IAC), Gurung & Others v SSHD [2013] EWCA Civ 8 and Patel v ECO [2010] EWCA Civ 17 had extended how "dependence" should be interpreted and the Tribunal had erred in the approach it had taken in paragraphs [53] to [55] of its decision. He further submitted that if the Tribunal erred in its approach to article 8(1) ECHR it had further erred in its approach to article 8(2). The Court made clear in Ghising that if family life was established then historic injustice would make refusal of entry disproportionate. Section 117A-D of the 2002 Act did not represent any kind of radical departure from the position established in Ghising and the Tribunal's approach in paragraph [70] also amounted to a material error.
8. Mr Bramble submitted there was no error and the submissions amounted to a mere disagreement. It could not be said the Tribunal's approach to family was flawed. Each case was case sensitive and the Tribunal had considered all of the facts and reached a conclusion that was open to it. The Tribunal had had regard to all of the evidence and balanced all of the evidence as evidenced by its approach from paragraph [41] onwards in its decision. The Tribunal found the decision it had to make a finely balanced one but ultimately it reached a decision that was open to it concluding at

paragraph [54] there was no family life. If there was an error on the issue of family life the Tribunal correctly considered the evidence when considering proportionality under article 8(2). There was no error in law.

9. Following these submissions, I reserved my decision.

DISCUSSION

10. The Tribunal was dealing with a claim by a family member of a former Ghurkha soldier. The sponsors' evidence was set out between paragraphs [10] and [33] of the Tribunal's decision and the grounds of appeal do not suggest the Tribunal's record of the evidence was lacking. Between paragraphs [42] and [56] the Tribunal examined the evidence and gave reasons for its findings.
11. Mr Wilford, who also represented the appellant before the First-tier Tribunal, submitted that the Tribunal's approach to the evidence was materially flawed.
12. The Court of Appeal in *Gurung* considered "family life" and stated -
- "45. Ultimately, the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case... in some instances 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. It all depends on the facts.
46. ... Paras 50 to 62 of the determination of the UT in *Ghising* contains a useful review of some of the jurisprudence and the correct approach to be adopted. It concludes at para 62 that the different outcomes in cases with superficially similar features emphasises to us that the issue under Article 8(1) is highly fact-sensitive."
13. The Tribunal took this approach when considering whether there was family life. The Tribunal was aware the appellant lived with his parents before they came to the United Kingdom in 2012 and it was also aware the appellant received his father's Ghurkha pension and maintained contact with his family. However, the Tribunal balanced this against the fact the appellant was 26 years of age and concluded he was leading an independent life. The issue argued today surrounds this approach.
14. At paragraphs [47] to [50] of *Gurung* the Court of Appeal considered the appeals of two applicants who were 24 and 26 years of age and whose parents came to live in the United Kingdom in circumstances similar to the facts of this appeal. Like the appellant those applicants were students and were both funded by their fathers. The First-tier Tribunal (in *Gurung*) concluded:
- a. There was little evidence of family life between them although there was evidence the father supported the applicants but that this was expected in Nepalese culture.

b. There was nothing to suggest a bond over and above that usually to be expected from the relationship between adult parents and their children.

15. Mr Wilford has argued the Tribunal erred in law in failing to attach any (or any adequate) weight to the fact that the appellant had always lived with his parents as a family unit. It was argued before the First-tier Tribunal that the family unit, with a strong emotional bond and elements of financial dependency, enjoyed family life while the appellant grew up and as in Gurung it was argued it was not suddenly cut off when he reached his majority.
16. The critical issue was whether there was sufficient dependence, and in particular sufficient emotional dependence, by the appellant on his parents to justify the conclusion that he enjoyed family life.
17. That was a question of fact for the First-tier Tribunal to determine and the First-tier Tribunal was entitled to conclude that, although the usual emotional bonds between parents and child were present, the requisite degree of emotional dependence was absent.
18. Every case is fact sensitive and in assessing whether there has been an error in law I have to consider whether the First-tier Tribunal had regard to all of the fact sensitive issues and thereafter approached the appellant's claim applying the correct test.
19. The mere fact the appellant's father financially supported the appellant did not automatically mean there was family life and as the courts have made clear being a Ghurkha dependent does not mean automatic entry to the United Kingdom.
20. This appellant had lived apart from his parents for three years albeit not through choice. The First-tier Tribunal was aware of the level of contact between the parties, the background and all of the current circumstances but was not satisfied there was family life. As the courts have made clear each case has to be considered on its merits.
21. I am not satisfied that the First-tier Tribunal failed to deal adequately with the issue of family life. The Tribunal set out all the relevant factors and demonstrated it was clearly aware of the family circumstances and in particular those in which his father and mother came to live in the United Kingdom while he remained in Nepal.
22. The Tribunal took into account the appellant's age at the date of decision and the fact that his father was paying everything for his upkeep. The Tribunal was entitled to reach the conclusion that the appellant had failed to show anything behind the normal relationship between adult children and his parents.

23. The Tribunal's findings about the appellant living independently must be read in the context of the evidence as a whole and does not indicate any misdirection or misunderstanding of the family position.
24. It is therefore not the case as the grounds allege that the judge failed to consider the family as a whole or make a lawful article 8(1) assessment.
25. Accordingly, I find that as Mr Wilford's argument on article 8(1) fails there is no merit to his argument on article 8(2).

DECISION

26. There is no error in law. I dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis