



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/21869/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25 April 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

KESHA MAYA PUN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Layne, Counsel instructed by Everest Law Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Nicholls promulgated on 31 August 2017 in which he dismissed the appeal against refusal of entry clearance. The appellant had applied for entry clearance to settle in the United Kingdom as the adult dependent relative of a Gurkha soldier who is now deceased. The appellant's widowed mother is settled in the United Kingdom.
2. There is no dispute about the facts or the chronology and the judge found that Article 8 family life did exist, given the degree of dependency, and that too is not challenged. The judge found, however, that on the particular facts of this case that the policy relating to former Gurkhas was not applicable and that there was no historic injustice

in this case because the appellant had been born as a result of a marriage into which her father had entered several years after he had been discharged from service.

3. The decision was challenged on the grounds, first that the judge had erred on the issue of historic injustice and had wrongly concluded that the policy did not apply in these circumstances; and second, that the judge failed to apply properly the decision in Ghising and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 567 (IAC) and also failed to deal with the decision in R. (on the application of Gurung and others) v Secretary of State for the Home Department [2013] EWCA Civ 8, and in particular had in his application of Section 117B of the 2002 Act failed properly to apply the decision in Rai v Entry Clearance Officer – New Delhi [2017] EWCA Civ 320. A further ground of appeal failing to consider relevant matters does not properly arise in this case.
4. Permission to appeal was granted by First-tier Tribunal Judge Alis on 12 March 2018. When the matter came before me it was properly accepted by Mr Deller, that there had been a procedural error in this case in that the point taken by the judge was not one which had been raised by the Entry Clearance Officer in the refusal notice, thus the appellant had been deprived of properly being able to deal with the case. On that basis, given the agreed error which I accept is an error and is material, I am satisfied that the decision should be set aside. I am also satisfied that it is proper to remake the decision in the Upper Tribunal.
5. Mr Deller accepted that this is a case in which Article 8 family life was engaged. There is no challenge to that. He accepted also that this is a case in which the historic injustice and the relevant policy is applicable. I am satisfied that that is a proper concession. I am also satisfied that, as Mr Deller accepted, on a proper analysis of the decisions in Ghising, Gurung and Rai, that the appeal falls to be allowed given the fact of historic injustice and that properly understood applied these cases, it is disproportionate in Article 8 terms to refuse entry clearance.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remake it allowing the appeal on human rights grounds. No anonymity direction is made.

Signed

Date 21 May 2018



Upper Tribunal Judge Rintoul