



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI 2022 003612
First-tier Tribunal No:
HU/53025/2021
IA/13075/2021

THE IMMIGRATION ACTS

Heard at Field House (Hybrid)
On the 15 December 2022

Decision & Reasons Promulgated
On the 14 February 2023

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL G A BLACK

Between

MS RAM MAYA TUMBAPO
NO ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed (Counsel)

For the Respondent: Mr S Walker (Home Office Presenting Officer)
(attending remotely)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge Moon)(FtT) promulgated on 24.1.2022 in which the appellant's human rights claims were dismissed. The appellant applied for leave to enter as an adult dependent relative of a former Gurkha soldier.

Background

2. The appellant is a citizen of Nepal aged 44 years old and she has a 14 year old daughter. Both live in a home owned by the sponsor who is the appellant's father [24] and who provides financial assistance [28-31] There is evidence of regular contact.

Grounds of appeal

3. In grounds of appeal the appellant argued that the FtT erred by failing to apply the correct test as to dependency in **Rai** [2017] EWCA Civ 30 of "real, effective, committed support" and instead looking at **Kugathas** in terms of over and above the normal family ties (Article 8).

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Scott-Baker who stated that in finding that the evidence failed to show dependency beyond the normal emotional ties, that there was evidence of the appellant living in the sponsor's house and financial support, together with regular visits and regular frequent indirect communication [see decision 24-46], the FtT erred in failing to direct herself as to the legal test in **Rai**. The FtT relied on speculative evidence as to the role of the appellant's child's father.

Submissions

5. I heard submissions from both representatives and Mr Walker conceded that the grounds were made out.

Discussion and conclusion

6. Having read the decision and the findings made by the FtT and heard the submissions and, I am satisfied that there was a material error of law. There was more than adequate evidence before the FtT to meet the test in **Rai**. The appellant was dependent on her father /sponsor in whose house she was living and for whom financial support was provided. I am satisfied that the FtT erred in assessing the evidence by applying the test in **Kugathas**. The FtT placed weight on evidence on discreet evidence as to a one off payment for a flight to India as evidence of other financial support but made no clear finding on this issue. The FtT placed weight on speculative evidence that the appellant had another source of income from the father of her child. The FtT erred by placing weight on the lack of examples of how the appellant was emotionally supported and guided by the sponsor in circumstances where no questions had been specifically

put. There was evidence of regular contact establishing emotional support. Accordingly I am satisfied that the test in **Rai** was met on the evidence adduced and having regard to the findings made by the FtT.

Error of law decision

7. There is a material error of law disclosed in the decision which shall be set aside.

Re making Decision

8. I heard briefly from both representatives as to future disposal and it was agreed that on the evidence before the FtT and having regard to the findings made that it was appropriate to remake the decision in the Upper Tribunal. Accordingly, I allowed the appeal on human rights grounds under Article 8. There was evidence of dependency (emotional and financial) meeting the test in **Rai** and in the absence countervailing factors the issue of historic injustice (which was unchallenged) prevails.
9. The appeal is allowed on human rights grounds.

Signed

Date 19.12.22

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 19.12.22

GA Black

Deputy Judge of the Upper Tribunal