



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

Appeal Number HU/01937/2015

THE IMMIGRATION ACTS

Heard at Newport
On 23rd February 2018

Decision and Reasons Promulgated
On 9th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SUBASH LIMBU
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Joseph (counsel, instructed by Everest Law Solicitors)
For the Respondent: Mr I Richards (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of Nepal who applied for entry clearance to join his parents in the UK, his father having settled in the UK being a former Gurkha soldier. The application having been refused the Appellant appealed. The appeal was heard by First-tier Tribunal Judge Phillips at Taylor House on the 8th of February 2017 and dismissed in a decision promulgated on the 24th of February 2017.
2. In the decision it was noted that it was accepted that annexe K did not apply as the Sponsor had not been granted settlement under the 2009 discretionary arrangements. The Judge's findings are set out at paragraphs 20 to 43 of the decision. In doing so the Judge considered the provisions of paragraph 19 of Annexe K and the time that the Appellant had spent living

in Nepal and the requirement that the Appellant and Sponsor had not lived apart for more than 2 years. The Judge found that it had not been shown that Annexe applied, a previous appeal under the Immigration Rules had been dismissed, the Judge was not satisfied that the family unit had been maintained since the Sponsor and his wife had left Nepal in August/September 2006. Since refusal the Appellant's parents had maintained their residence and family unit in the UK.

3. In paragraph 29 the Judge referred to the case of AA and found that the Appellant could not be said to be residing in a family with the Sponsor as part of a family unit because his parents settled in the UK in 2006. The Judge went on to find that the personal circumstances of the Sponsor did not justify a grant of leave. The Judge found that the exclusion of the Appellant would not place the UK in breach of the obligations under article 8.
4. The grounds argue that the Judge did not consider the issue of the Appellant's family life adequately in the light of the evidence of the time that the Sponsor and the Appellant's mother had spent in Nepal following their grant of ILR. It was submitted that article 8(1) was engaged and that the appeal should have been allowed having regard to the historic injustice.
5. In submissions it was observed that the evidence showed that since being granted ILR the Appellant's mother spent 5½ years in Nepal compared to 3 years in the UK. There was evidence of financial support and communication. There was no adverse immigration history. for the Home Office it was submitted that the reasons and findings were adequate and the Judge was entitled to find that there was no family life. At the date of the application the Appellant was over 27 and there was no evidence to show he could not care for himself. Matters relevant to the historic injustice had been considered. The decision was reserved.
6. Given the amount of time that the Appellant's mother has spent in Nepal it could be questioned whether she is settled in the UK for these purposes, there is no evidence to show that she would stop travelling back and forth as she has done up to now.
7. What does concern me about the decision is that there is no analysis of the time that the Sponsor and his wife have spent in Nepal in the years since ILR was granted. As indicated above it could be argued that the Sponsor and/or his wife have not settled in the UK but equally the times spent there and in the UK have not been analysed to see if the Appellant remained part of the family unit as such and if so for what periods. If he did is there any relevance to Annexe K by analogy?
8. In the circumstances, and with some hesitation, I find that the Judge erred in the analysis undertaken by the Judge with regard to whether there is family life within the meaning of article 8(1) of the ECHR. In the circumstances it seems to me preferable that the appeal should be remitted for all relevant evidence to be collated and assessed with no findings preserved.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The decision is remitted to the First-tier Tribunal at Taylor House to be heard de novo, not to be heard by First-tier Tribunal Judge C M Phillips.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

I make no fee award which remains a matter for the First-tier Tribunal at the conclusion of the decision of the remitted appeal.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 8th March 2018