



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

Appeal Number: HU/03724/2015

THE IMMIGRATION ACTS

Heard at Field House

On 26th February 2018

**Typed, corrected, signed and sent to
Promulgation on 13th February 2018.**

**Decision & Reasons
Promulgated
On 15th March 2018**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR PUKAR SAHI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Fijiwalla, Home Office Presenting Officer

For the Respondent: Mr D Balrood, Counsel instructed by Everest Law Solicitors

DECISION AND REASONS

1. The appellant is the Secretary of State for the Home Department and to avoid confusion I am going to refer to her throughout this determination as being, "the claimant".
2. The respondent is a citizen of and resident in Nepal, whose date of birth is 10th December 1987. He made application to the Secretary of State for

entry clearance to settle in the United Kingdom as an adult dependant of his father, Mr Kessar Bahdur Sahi, a former British soldier in the Gurkha regiment. That application was refused.

3. The respondent appealed that decision and his appeal was heard by a panel of the First-tier Tribunal, comprising Judges Scott-Baker and Algazy, sitting at Taylor House on 27th March 2017. They allowed the appeal under Article 8. The claimant, dissatisfied with the appeal, asserted that the judges had erred in law by finding that Article 8 was engaged, because the respondent was financially and emotionally dependent upon the sponsor. The grounds then suggest that Article 8 was not engaged and that the evidence did not demonstrate emotional dependency to the *Kugathas* standard. It was suggested that in assessing the respondent's emotional and financial dependency, the First-tier Tribunal erred.
4. Mr Balrood made reference to paragraph 37 of the determination, where Counsel appearing on behalf of the respondent before the First-tier Tribunal, relied on an acknowledgement by the Entry Clearance Manager in his review that he was satisfied that Article 8(1) **was** engaged.
5. Mr Balrood drew my attention to the fact that there was no Presenting Officer before the panel of the First-tier Tribunal and that they were, therefore, in a position where the question of whether or not Article 8 was engaged was not a matter for them to decide, since it had already been accepted on behalf of the claimant that it was. The panel of the First-tier Tribunal deal with the question of proportionality at paragraphs 50, 51 and 52 of their determination and, given that the sponsor had explained in his witness statement to the Tribunal that he would have settled in the United Kingdom on his discharge if he had the opportunity to do so, the Tribunal had not erred, Mr Balrood submitted. He invited me to uphold the decision of the Tribunal.
6. Ms Fijiwalla, who appeared on behalf of the claimant, accepted that she was in some difficulties given the concession by the Entry Clearance Manager in his review at page 2.
7. Neither representative having further comments to make, I have concluded that I must **uphold this determination**. The Entry Clearance Manager's review quite clearly indicates that he was satisfied that Article 8 was engaged. There was no Presenting Officer before the Tribunal and so the question of whether or not Article 8 was engaged was not something that need trouble them, since it had already been accepted that it was.
8. **In the circumstances I find that the First-tier Tribunal have not materially erred in law and her determination is upheld.** The appeal is allowed.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

As the appeal was allowed, the First-tier Tribunal made a fee award in favour of the appellant of the full amount of any fee paid.

Richard Chalkley
Upper Tribunal Judge Chalkley