



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11870/2015

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On 25 May 2018

Decision & Reasons Promulgated
On 30 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

ENTRY CLEARANCE OFFICER

Appellant

and

SMIRITI RAI

(ANONYMITY NOT DIRECTION MADE)

Respondent/Claimant

Representation

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent/Claimant: Mr C Howells, Counsel instructed by Everest Law

DECISION AND REASONS

1. This is the continuation of an appeal against the decision of First-tier Tribunal Judge O'Rourke sitting at Newport on 12 June 2017. Judge O'Rourke allowed the appeal of the Claimant against the decision of the Entry Clearance Officer to refuse her entry clearance as the adult dependent relative of the Sponsor, a Gurkha veteran.
2. The appeal came before Deputy Upper Tribunal Judge Monson on 8 March 2018. For the reasons given in his decision Judge Monson allowed the Entry Clearance Officers appeal and set aside the decision of the First-tier Tribunal to be remade by the Upper Tribunal. Judge Monson did not remake the decision because he considered that fairness required

both parties to have an opportunity to address the issue upon which error of law was found to have been made. The specific issue to consider was whether family life between the Claimant and the Sponsor had been reconstituted and if so whether the proportionality considerations would be the same as those applying in Gurkha cases where family life has endured continuously.

3. At the resumed hearing before me Mr Mills appearing on behalf of the Entry Clearance Officer said that the Secretary of State agreed that there would be no difference between a situation where family life had endured continuously and one where it had ceased and resumed. If an Appellant would have been entitled to settle or be born in the United Kingdom but for the historic injustice to Gurkha veterans, then it would be disproportionate not to allow that Appellant to settle because of a hiatus in family life. Mr Mills said that the only issue was whether there had been any change of circumstances since the original appeal hearing and it was agreed that this could be ascertained by hearing evidence from the Sponsor.
4. Mr Howells called the Sponsor to give oral evidence. The Sponsor adopted the contents of his witness statement at pages 6 to 13 of the First-tier Tribunal appeal bundle. He said that nothing has changed about his daughter's circumstances except that she now has more problems. She lives alone and boys from the village give her a lot of trouble. She was crying on the phone to him yesterday. The boys tease her and throw stones at her. She uses his pension to live. She cannot get work despite having made many applications. She lives alone in rented accommodation and is unhappy.
5. Mr Mills did not cross-examine. He said that the Secretary of State accepted that family life existed between the Sponsor and his daughter and that bearing in mind the historic injustice to Gurkha veterans it was conceded that the decision of the Entry Clearance Officer to refuse entry clearance was disproportionate.

Decision

6. Given the concession made by Mr Mills on behalf of the Entry Clearance Officer my decision is straightforward. Family life exists between the Sponsor Bira Shankar Rai, who is a Gurkha veteran settled in the United Kingdom, and his daughter Smriti Rai the Appellant before the First-tier Tribunal. Were it not for the historic injustice which the Secretary of State accepts to have been perpetrated upon Gurkha veterans and their families his daughter could have joined him in the United Kingdom long ago. In these circumstances it is disproportionate to refuse entry clearance to allow her to join him.

7. I remake the decision of the First-tier Tribunal by allowing the claimant's appeal.

Signed:

Date: 25 May 2018

A handwritten signature in black ink, appearing to read 'J F W Phillips'. The signature is written in a cursive style with a large initial 'J' and 'P'.

J F W Phillips
Deputy Judge of the Upper Tribunal
8.