



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15203/2016

**THE IMMIGRATION ACTS**

At Field House  
On 2 July 2018

Decision & Reason Promulgated  
On 13 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

Miss Premkala Gurung

Appellant

and

The Entry Clearance Officer

Respondent

Representation

For the appellant: Mr R. Layne, Counsel, instructed by Everest Law Solicitors

For the respondent: Miss J. Isherwood. Home Office Presenting Officer

**DECISION AND REASONS**

1. As I set out in the reasons for finding that the determination of the First-tier Tribunal Judge contained an error of law, the issue is whether applying the decision in *Jatinder Rai v Entry Clearance Officer (New Delhi)* [2017] EWCA Civ 320, the appellant, who was aged 31 at the time of the decision, is entitled to gain entry to the United Kingdom on the basis of the relationship which she enjoys with her parents who are settled in the United Kingdom. Whilst relationships between adults do not necessarily acquire the protection of

Article 8, they may do so where there are further elements of dependency involving more than the normal ties that exist between adult family members. Dependency, is not, however limited to an economic dependency but may include a dependency in the sense that support is provided which can properly be described as real, committed or effective such that its deprivation amounts to a violation of the claimant's human rights.

2. In my decision I drew a distinction between the situation where a couple agreed to emigrate, notwithstanding the presence of their children in their country of origin, because those parents are satisfied that the children are sufficiently capable to form their own independent households without their parents continued support and the situation where, notwithstanding separation, a dependency in the form that I have described in the preceding paragraph continues to exist.
3. In paragraph 7 of my decision, I noted that the material described by the judge provided only a very vague impression of the dynamics of the various relationships. At the conclusion of the appellant's minority, she remained in the family home until her father left in 2009 and her mother somewhat later. From the moment that she became an adult until the departure of her parents, the nature of the family life that the three enjoyed remained opaque. The provision of accommodation by her parents, in circumstances where the appellant was able to enjoy a private life as an independent young woman, would not be sufficient to require the United Kingdom authorities to grant entry clearance to enable her to join her parents.
4. I did not re-make the decision on the material that was before the First-tier Tribunal but provided the appellant with a further opportunity to flesh out the nature of the private life that she claimed protected her from a refusal of entry clearance. This could not have been a clearer indication that she had free rein to adduce further evidence of the type that I had identified directed towards the nature of the support that her parents provided her during the relevant period such as to constitute real, committed and effective support.
5. In response, the appellant provided a further witness statement dated 11 April 2018. It is barely a page long. Unsurprisingly, it describes how, in the absence of her parents and in particular her mother, she performs her own cooking and cleaning and shopping. She describes a limited social life much of it spent at home watching television and using the Internet. Importantly, she describes how there is nothing for her in Nepal and that she wants to help her mother looking after her father who is ill. She states that she would be able to provide 'necessary support to [her] parents in their day-to-day activities.' The tenor of this part of her evidence is that she seeks entry clearance to support her parents rather than focusing on the support that they provide her.
6. Finally, she states that she has never been in any employment.
7. This, in my judgement, goes nowhere near far enough to suggest that the appellant enjoys the real, committed and effective support of her parents or

that she requires it. It merely describes an adult living alone in a house found for her by her parents.

8. Her father was also provided a further witness statement but who could not give evidence. Importantly, he makes reference to his son, Nauraj, whom he described as a drug addict who would leave home and not return for days and provided the appellant with no support until he disappeared. In describing the appellant's life prior to his departure, he describes a perfectly normal family relationship in which the appellant helped her mother in cooking, cleaning and washing. He talks of the appellant and Nauraj as if they were the only children he had in Nepal.
9. Unfortunately, the appellant's father has been diagnosed with lymphoma in August 2017. He is clearly very poorly. He would like his daughter to be present during the end of his life.
10. Once again, however, this fails to address the issue which I expressly identified when I directed that the determination should be re-made.
11. The appellant's mother has also made a further statement dated 5 April 2018. It too is very short. She talks about a limited social life in Nepal including

'At best she would go to weddings in the neighbourhood if she is invited. To my knowledge, she has no friends. She spends most of the time at home cooking and cleaning. She does shopping from nearby. There is nothing I can recall that would be exciting about her life in Nepal.'
12. The appellant's mother then describes how she finds it difficult to continue looking after her husband on her own and that her son is only able to assist them in a limited form. She describes how her father needs his daughter to look after him.
13. Once again, this fails to address the issue which is before me. This is not an application for entry clearance to enable the daughter to care for her ailing father. Indeed, such an application is unlikely to succeed but, in any event, that is not the approach that I must adopt.
14. Finally, the appellant's brother, Purna, has made a short witness statement dated 5 April 2018. He lives in Greenford Road UB6 whereas his parents live in Hayes, UB3. He describes how he settled in the United Kingdom in 2007. He describes his father's condition and that he, his wife and stepmother are the only persons in the United Kingdom his father has to look after him. He, too, sets out how the appellant is needed to look after them. He does not address the issue of the appellant's dependency.
15. With the assistance of a Nepalese interpreter, the appellant's mother gave evidence. As I stated, the existence of other family members in Nepal was hitherto limited to a reference to Nauraj who was described as a drug addict, leading a rootless existence. It was a surprise to me and, indeed, to Mr Layne, when the appellant's mother described the existence of four sons as well as two step-sons, some six in total. One of them, Purna, is in the United Kingdom. The

others are in Nepal. The appellant's mother's evidence was highly unsatisfactory. She was asked to deal with each of her sons in Nepal in turn. The first two she mentioned she described as living '*Sometimes in one place. Sometimes in another.*' The third she described as living in Butwal. The description of a fourth, Durga, was limited to '*I do not know. He is on his own with his wife.*' Finally, she described Nauraj as a drug user who is without an address.

16. I do not accept that this is the only information that the appellant's mother was able to provide about her five sons in Nepal save to say that they were all independent. She accepted that there has been communication with them. She accepted that they were in a position to speak to the appellant, at least on the telephone. I am well aware of what I said when I found an error of law in the necessity of focusing upon the nature and scope of the dependency that the appellant enjoys with her parents in the United Kingdom and not the appellant's ability to look to other people in Nepal for support. However, the fact that the evidence until the hearing before me omitted reference to these other children demonstrates that the appellant's parents have been less than frank about the family dynamics at a whole, including their own relationship with their daughter. As Ms Isherwood rightly pointed out if the appellant was in such a close and dependent relationship with her parents, her mother would know a great deal more about the situation of her five sons in Nepal. The mother's explanation was simply to say

"We talk regularly but we do not talk about such things. She is dependent on us."

17. There is evidence of telephone contact with Nepal. The mother was asked to identify her daughter's telephone number by reference to page 88 of the bundle. She stated that it could be the number ending in 22 but she had left the information behind. She also described how her daughter had failed her nursing examinations and that her parents had been unable to further help her with her fees. She described having savings of £1000-£1,200 at home in cash.
18. The mother provided very limited information about financial support that had been provided to her daughter. There was evidence of transfers in various amounts, sometimes £100, sometimes £200 or more. She also stated that she sometimes asked friends to deliver money. There was no evidence of this from the couriers. These funds were derived from the benefits the appellant's parents receive. However, the last transfer recorded in the papers took place on 5 June 2017, [p.87].
19. The appellant's brother also gave evidence. It was put to him that his statement did not explain how his sister was emotionally dependent on her parents. He said that he was not in very close contact with his sister and that it was not within his knowledge. He repeated that he does not have close contact with his sister. He did not know where she lived except that she lived in Kathmandu. He accepted that his sister was dependent upon her parents when they lived together. He said,

“I have not really contacted or spoken to my sister. There is an app she sometimes uses to send a message.”

20. However, he stated that his mother tells him that she contacts her almost every day. He also stated that he never spoke to his brothers in Nepal, some of whom could not be contacted at all.
21. I am satisfied that the evidence is insufficient to establish that the appellant is dependent upon her parents in the sense of receiving the benefit of real, committed and effective support. The circumstances in which the appellant finds herself in Nepal have been described in very unsatisfactory terms by her mother. Whilst, of course, the focus of this enquiry is the support that is provided to her by her parents, I am not satisfied that the evidence has provided a truthful picture of the family dynamics in Nepal. Mr Layne was, of course, required to concede that this was a dysfunctional family if the evidence were to be accepted. However, I am not persuaded that if the appellant has such an emotional dependency upon her parents, her parents would not be able to provide a fuller picture of circumstances in Nepal.
22. The burden was upon the appellant to establish the nature of the relationship that she enjoys with her parents. The directions that I gave provided a generous opportunity for the appellant and her witnesses to provide a detailed account of that dependency. Their evidence falls well short of anything that establishes the appellant was or is entitled to entry clearance. Inevitably, sympathy is felt for the father who would like to see his daughter. However, that is a discrete and quite separate basis of claim which cannot be satisfied by inflating a dependency on the part of the appellant which, as a matter of fact, does not exist.

## DECISION

- (i) I have found that the decision of the First-tier Tribunal contains an error of law and that it should be set aside.
- (ii) On re-making the decision, I dismiss the appellant’s appeal on all the grounds advanced.

ANDREW JORDAN  
DEPUTY UPPER TRIBUNAL JUDGE  
10 July 2018