



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

Appeal Number: HU/22133/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2020**

**Decision & Reasons Promulgated
On 16 January 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**NARMAYA PUN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the appellant: Mr D. Balroop, instructed by Everest Law Solicitors

For the respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 01 October 2018 to refuse a human rights claim in the context of an application for entry clearance as the dependent adult daughter of a Gurkha widow.
2. First-tier Tribunal Judge Andonian ("the judge") dismissed the appeal in a decision promulgated on 08 July 2019. He was not satisfied that the appellant met the requirements of Appendix FM of the immigration rules

for entry as an adult dependent relative, nor did she meet the requirements of the respondent's policy, contained in Annex K of IDI Chapter 15, for entry as the dependent of a Gurkha widow. The appellant did not seek to appeal those findings.

3. The judge went on to consider whether the decision showed a lack of respect for the appellant's right to family life with her mother under Article 8 of the European Convention. It is accepted by both parties that this part of the decision lacks structure and in places is somewhat unclear. On behalf of the respondent, Mr Clarke accepted that the judge's findings disclosed an error of law in relation to the assessment of dependency and the proper application of the principles outlined in decisions such as *Kugathas v SSHD* [2003] INLR 170 and *Rai v ECO* [2017] EWCA Civ 320. Despite the lack of structure, it seemed clear from the judge's finding at [68] that he was satisfied that the appellant was emotionally dependent upon her mother, and at [60], that she was also financially dependent upon her despite her age and their continued separation. In the circumstances, he submitted that the judge misdirected himself in relation to his assessment of family life. He asked me to set aside the decision, to remake and to allow the appeal.
4. In light of the respondent's concession, I need only make brief findings. Although the judge's findings lack clarity and a coherent structure, I am satisfied that the concession is one that could properly be made. The judge's findings of fact relating to emotional and financial dependency were tolerably clear although the conclusions he drew from those findings are accepted to amount to a misdirection in relation to the relevant law.
5. Based on those findings the respondent accepts that the appellant continues to maintain a family life with her mother for the purpose of Article 8(1). Despite being an adult, the appellant had not established an independent life and had always lived in the same extended household as her mother prior to the sponsor settling in the UK. Since her mother came to the UK as a Gurkha widow there continues to be a mutual relationship of emotional dependence. The appellant continues to be financially dependent upon her mother. I am satisfied that the respondent's decision to refuse entry clearance showed a lack of respect for the appellant's right to family life which engaged the operation of Article 8(1) of the European Convention.
6. Contrary to the findings made by the First-tier Tribunal with (inaccurate) reference to the decision in *Ganesh Pun (Nepal) v SSHD* [2017] EWCA Civ 2106, the appellant remains emotionally and financially dependent upon her mother, who is the widow of a Gurkha veteran. Her father retired from the army in 1970 after eight years' service. But for the historic injustice it is likely that the family could have settled in the UK long ago when the appellant was still a young child. The relevant case law makes clear that in most cases the historic injustice should be given determinative weight in the absence of any other strong public policy considerations: see *Ghising*

and others (Ghurkhas/BOCs: historic wrong; weight) [2013] UKUT 567. The judge noted that there were no additional public interest considerations that might weight against the appellant such as a poor immigration history or criminal convictions [51]. None were raised by the respondent in the decision letter or in the ECM review. As such, I am satisfied that weight should be given to the historic injustice and that this is determinative of the proportionality assessment. I conclude that the decision does not strike a fair balance between the weight to be given to the public interest in maintaining an effective system of immigration control and the appellant's right to family life. The decision amounts to a disproportionate interference with the appellant's rights with reference to Article 8(2) of the European Convention.

7. The First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and remade based on the respondent's concession. The decision to refuse a human rights claim in the context of the application for entry clearance is unlawful under section 6 of the Human Rights Act 1998.

DECISION

The First-tier Tribunal decision involved the making of an error of law

The appeal is ALLOWED on human rights grounds

Signed  Date 14 January 2020
Upper Tribunal Judge Canavan