



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: HU/18964/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 24 May 2021

On 03 June 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

D R

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr S Jaisri of Counsel, instructed by Sam Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Nepalese national with date of birth given as 10.11.88, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 13.1.21 (Judge McLaren), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 15.8.19, to refuse her application for entry clearance as the adult dependent relative of a former Gurkha now settled in the UK.
2. Permission to appeal was granted by the First-tier Tribunal (Judge Loke) on 1.3.21, on the basis that the grounds are arguable. "The judge makes reference to 'complete financial dependency' at [33] which is not the test, and while he accepts that there is some financial dependency the judge arguably fails to consider whether it is effective and committed support. Furthermore, it is arguable the judge failed to properly consider the provisions of Annex K and the weight to be given to the historic injustice when finding at [36] that bonds over and above normal loving ties were required."
3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
4. The respondent's Rule 24 reply, dated 5.3.21, submits that the First-tier Tribunal Judge directed himself appropriately. The point is made that whilst there was evidence of some financial support from the appellant's mother, "without evidence of the appellant's outgoings the judge would not be in a position to evidentially assess whether the support was real, committed and effective. This lacuna in evidence also extended to the emotional dependency that the appellant stated existed between herself and her mother (Determination [33]). It will be submitted that whilst it was an error for the judge to state that complete financial dependency was required, the error is not material given his finding that there was no evidence to indicate the level of support that the appellant was receiving either financially or emotionally."
5. At [33] the judge accepted that the appellant and the sponsor, the appellant's mother and widow of a former Gurkha soldier, enjoyed family life together prior to the sponsor's relocation to the UK in 2019. However, the judge considered that the evidence as to emotional and financial dependency was inadequate and at [36] that the appellant and the sponsor did not enjoy "closer bonds that then normal loving ties to be found between an adult child and her mother."

6. Given that the judge found that there was family life between the appellant and her sponsoring mother up to and including immediately prior to the latter's relocation to the UK, and that both had applied together to come to the UK, as Mr McVeety conceded, it is difficult to see on what basis the appeal should not have been allowed. I am satisfied that, as the respondent has conceded, the judge was in error to seek evidence of "complete financial dependency" and failed to properly take into account the historic injustice element. Effectively, the judge found that family life was not present and ceased the Razgar stepped approach at that point. The judge was in error. The family life requirement was present, with continuing financial support from the sponsor demonstrating that ties were maintained. As the historic injustice element satisfies the public interest in the article 8 proportionality balancing exercise, the appeal should have been allowed. Mr McVeety did not resist the remaking of the decision immediately by allowing the appeal.
7. In the circumstances and for the reasons set out above, I find such error of law in the decision of the First-tier Tribunal as to require it to be set aside. There is no purpose in rehearing the appeal as on the facts found by the First-tier Tribunal the appeal must be allowed.

Decision

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

I remake the decision in the appeal by allowing it on Article 8 ECHR human rights grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 24 May 2021