



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03341/2015

THE IMMIGRATION ACTS

Heard at Field House
On 15th May 2018

Determination Promulgated
On 21st May 2018

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE LINDSLEY

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

GHAMINDRA GURUNG
(ANONYMITY ORDER NO MADE)

Respondent

Representation:

For the Appellant: Mr D Balroop, of Counsel, instructed by Everest Law Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Nepal born on 29th June 1982. He wishes to come to the UK to settle as the adult dependent son of his father, Mr Chandra Bahadur Gurung, a former Gurkha soldier who served with the British army between 1962 and 1978.

His appeal against refusal of entry clearance was allowed by First-tier Tribunal Judge Gribble in a determination promulgated on the 8th November 2016.

2. Permission to appeal was granted by Upper Tribunal Judge Kekic on 5th January 2018. Judge Kekic extended time and found that it was arguable that the First-tier judge had erred in law in allowing the appeal when arguably it has subsequently come to light that the claimant lied about being unmarried in his application and to the First-tier Tribunal.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

4. It is explained that the argued for deception by the claimant was only discovered when his passport was called for by the entry clearance officer to issue the visa and it was noted that his next of kin in his passport is stated to be his wife. It had not been intended to appeal until this discovery was made on 6th October 2017 and an application to appeal was made on 10th October 2017. It had taken this length of time to get to the stage of implementing the decision of the First-tier Tribunal as the matter had to be referred back to the Referred Case Unit before the entry clearance officer was empowered to make the grant of entry clearance as it was a human rights award.
5. It is also argued in the grounds of appeal that this evidence shows that the claimant, the sponsor or his representative had provided misleading evidence to the entry clearance officer and misled the First-tier Tribunal. It is said that to allow the decision of the First-tier Tribunal to stand could be seen as the Tribunal endorsing deception. There is authority that the entry clearance officer does not need to issue entry clearance following a positive appeal decision if there is a good reason not to do so.

Conclusions - Error of Law

6. The claimant did claim to be unmarried in this application to the entry clearance officer and in his evidence to the First-tier Tribunal, see paragraph 13 of the decision, reflecting his application form, his witness statement and that of the sponsor (his father). This single status was clearly a significant factor in the finding of the First-tier Tribunal that the claimant had family life for the purposes of Article 8 ECHR, meaning family ties over and above the normal emotional ties between an adult child and his parents, made at paragraph 22 of the decision.
7. The evidence that the entry clearance officer says shows the claimant is, and was at all material times, married in his passport issued on 12th April 2015, which on page 31 states he is married to Ganga Maya Gurung, and provides an address for the couple in Syangja. This document was provided to the entry clearance officer with the application, however a copy was not put in the entry clearance bundle, nor was it included in the claimant's bundle before the First-tier Tribunal.
8. The evidence supporting the contention that the claimant was married at the time of application and decision of the First-tier Tribunal was not therefore before the

First-tier Tribunal. It was provided to the entry clearance officer at the point of application but not apparently noticed by them until the time at which an officer came to consider issuing the entry clearance many months after the successful appeal. We understand from material put for the first time before us that the claimant's position may be that he was not and is not married to Ms Gurung, and that her details only appear in the passport because he was asked for an emergency contact who lived nearby to him and thus gave this friend's details which were entered by the person who assisted make the passport application in error. The address is not of one house but of a district in which there are a number of houses, and he did not cohabit with Ms Gurung at any point but did live in the same area. He says he was not aware that she had been wrongly entered in his passport as his wife until the application by the Secretary of State to appeal against the decision of the First-tier Tribunal.

9. We are not persuaded that the First-tier Tribunal erred in law in allowing the appeal in these circumstances. We find that the First-tier Tribunal came to a sustainable decision based on consideration of the totality of evidence presented by the entry clearance officer, the claimant and his sponsors that on the balance of probabilities the claimant was not married; had a family life relationship with his parents; and thus was entitled to succeed in his appeal. This is not a situation where the First-tier Tribunal based its decision on an agreed error of fact as the claimant insists that he is not married despite what is said in his passport.
10. In general, of course, where an appeal is allowed, and the entry clearance officer has decided not to appeal, it will be expected that entry clearance will be issued, see MM (Allowed appeal: further refusal) Pakistan [2008] UKAIT 40. However, there will be occasions, as are outlined in MM, where evidence of deception or a significant change of circumstances after the determination of the appeal comes to the notice of the entry clearance officer where this will rightly not inevitably follow.
11. If, on consideration of the totality of evidence, including the passport and the statements addressing the claimant's marital status that have been submitted in the context of this appeal and any other relevant evidence before the entry clearance officer, it is believed that the First-tier Tribunal was deceived by this claimant about his being single then it may be that the entry clearance officer will decline to issue the visa. Any challenge to that would be outside the scope of the present appeal. Nothing that has been argued before us begins to show fault however with the decision-making of the First-tier Tribunal which is the gateway to an appeal to this Tribunal.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We uphold the decision of the First-tier Tribunal allowing the claimant's appeal.

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 15th May 2018