



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

Appeal Number: IA/39044/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 23 May 2014  
Extempore judgment**

**Determination  
Promulgated  
On 6 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**MRS SUN HEE KANG**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Reid, Counsel, instructed by Kothala & Co (Harrow Road)

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the appeal of Mrs Sun Hee Kang against the decision of the First-tier Tribunal who dismissed her appeal against the refusal of the Secretary of State to grant her further leave to remain in the UK.

2. The application that was made by Mrs Kang is slightly confusing. According to form FLR(O) she wished to remain in the UK as a family member of her son but she does not meet the required Rules for that category because he is here as a Tier 4 Student. She had initially been granted leave to enter by way of entry clearance as the parent of a child at school under the guardian visa, paragraph 56A of the Immigration Rules. Unfortunately the covering letter that was sent with the application is not complete, only the first page is available. The Home Office do not appear to have a second page and Mrs Kang's present solicitors who have taken over from the solicitors who submitted the application have been unable to obtain the file from those solicitors.
3. The Secretary of State took a decision to refuse to vary leave to remain on the grounds that she did not meet the requirements of Appendix FM under the parent route nor did she meet paragraph 276ADE of the Rules. Consideration was not given to paragraph 56A of the Rules. One of the arguments that was put to me was that that should have been considered by the Secretary of State and that therefore the decision by the Secretary of State was unlawful for not having dealt with the application before her. I cannot accept that. The front page of the covering letter refers to Mrs Kang *initially* [my emphasis] coming to the UK, which implies that she was attempting to change her status. But her grounds of appeal against that decision do make it very clear that she was intending to remain in the UK as the parent of a child in full-time education. She refers to not making her permanent home here in the UK; she refers to her son having a Tier 4 Student permit and that she submitted the various documents that are required in order to meet the requirements of paragraph 56A. So far as the decision of the First-tier Tribunal is concerned the judge only considered the requirements of Appendix FM for a decision under the parent route and paragraph 276ADE of the Rules.
4. The First-tier Tribunal Judge did not consider the grounds of appeal. In fact, in paragraph 7 of her determination she says:

“The appellant does not present any grounds which suggest that she meets the requirements of the Immigration Rules because she wishes to remain in the UK whilst her son studies here but he is not a British citizen. In effect the appellant has chosen for her son to attend a junior school in the UK and wants leave to care for him.”
5. The judge then goes on to look at Article 8. She fails completely to engage with the grounds of appeal. On that basis I am satisfied that there is an error of law in the decision of the First-tier Tribunal such that the determination is to be set aside to be remade.
6. I heard submissions from both parties as to whether I should hear the appeal or whether it should be remitted to the First-tier Tribunal for determination. Although some documents were before me the Secretary of State had in her Rule 24 response said that she did not accept that

adequate documentation had been submitted. Ms Everett said that it was not clear whether, when that Section 24 response was drafted whether the documentation was present. Ms Reid is not clear what documentation is before the Tribunal.

7. I am also concerned that the significant substantive grounds of appeal have not been considered in any way by the First-tier Tribunal and for that reason I am satisfied that no relevant findings of fact have been made and therefore in accordance with the President's Practice Direction this matter should be remitted to the First-tier Tribunal for a full hearing on the facts with no findings retained, to be heard by any First-tier Judge other than Ms Mensah.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the decision to the First-tier Tribunal for hearing afresh, no findings to be preserved.

Signed

Date 5<sup>th</sup> June 2014

Upper Tribunal Judge Coker