



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/34913/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 23rd April 2015**

**Decision and Reasons
Promulgated
On 19th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR STUART NEL
(ANONYMITY NOT DIRECTED)**

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer

For the Respondent: S Tettey, Counsel instructed by Howells Solicitors.

DECISION AND REASONS

1. In this case the Secretary of State appealed, with permission, against the decision of First-tier Tribunal Bircher to allow the appeal of Mr Stuart Nel against her decision (a) to refuse his application for leave to remain as the child of a person who is settled in the United Kingdom, and (b) to remove him from the United Kingdom. For convenience, I shall hereafter make reference to the parties according to their status in the First-tier Tribunal.

2. The grounds of appeal to the Upper Tribunal challenged Judge Bircher's findings that the appellant met the requirements of Appendix FM of the Immigration Rules and the alternative decision that his removal would be incompatible with his rights under Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.
3. In granting permission to appeal, however, Judge Robertson noted that the application ought to have been considered by the respondent under Part 8 of the Rules, with specific reference to paragraph 297, rather than under the provisions of Appendix FM [the grant of permission to appeal in fact refers to paragraph 287, but this is clearly a clerical error].
4. Having noted the terms of paragraph A280 of the Rules, I concluded that Judge Robertson was correct and, when I drew this provision to her attention, Mrs Pettersen agreed. She therefore sought permission to withdraw the decision under Rule 17(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Having established that Mr Tetley did not object to this course of action, I decided that it would be in the interests of justice to grant the application.

Notice of Decision

5. Permission is granted to the Secretary of State to withdraw the decision that is the subject of this appeal.

Anonymity is not directed

Signed

Date

Judge Kelly
Deputy Judge of the Upper Tribunal