



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

Appeal Number: OA/12561/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Centre City Tower
On 14th April 2016**

**Decision and Reasons Promulgated
On 27th April 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

[P N]

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr S Vokes, counsel, instructed by Vesey solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. In a decision promulgated on 6th July 2015, First-tier Tribunal Judge Pirotta dismissed the appellant's appeal against the decision of the Entry Clearance Officer dated 26th September 2014 refusing him leave to enter the UK. His mother has discretionary leave to remain in the UK and has two children in the UK, one of whom is a British Citizen and the other has discretionary leave to remain for the same period as her – until August 2016.

2. The decision by Judge Pirota can at best be described as confused. She makes no clear finding as regards any applicability of the Immigration Rules, Mr Vokes agreed that the appellant does not meet the requirements of the Rules not least because his mother has only discretionary leave to remain in the UK and was not granted leave to remain with a view to settlement. Although plainly the ability to meet elements of the Immigration Rules may be relevant to the assessment of the proportionality of the Article 8 decision, this decision purports to address issues of sole responsibility, lapses into consideration of what appear to be issues of whether there are compelling and compassionate circumstances such that this 7 year old child should be permitted to come to the UK and fails to make any coherent findings on the best interests of the child or the right to respect for family life not only of the child but also the child's mother and half siblings. There is no consideration of established case law principles.
3. Mr Diwyncz quite properly conceded that this decision simply cannot stand.

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 appeal to the First-tier Tribunal for rehearing.

Consequential Directions

The matter to be remitted to Birmingham IAC First-tier Tribunal to be heard by a judge other than Judge Pirota.

A Vietnamese interpreter required.

Time estimate 2 hours.

When listing please liaise with Counsel's clerk – No 8 Chambers



Upper Tribunal Judge Coker

Date 14th April 2016