



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

Appeal Numbers: OA/12751/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 16th July 2014**

**Determination
Promulgated
On 29th July 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

PHANUMAT KHRUTSAHA

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

Appellant: Mr T Lay, of Counsel (by direct access)
Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DECISIONS, REMITTAL AND DIRECTIONS

1. This appeal has its origins in a decision of the Entry Clearance Officer dated 14th May 2013, whereby the application of the Appellant for the status of settlement to enable her to enter the United Kingdom and reside there with her mother was refused. By its determination promulgated on 04 March 2014, the First-tier Tribunal (the "FtT") dismissed the ensuing

appeal. Permission to appeal to this Tribunal was granted on the grounds of procedural unfairness, disregard of material evidence and/or a failure to make necessary findings and/or a failure to provide reasoned findings and failing to apply the correct legal test.

2. In an *ex tempore* judgment delivered at the conclusion of the hearing, I allowed the appeal, on the following grounds, in summary:

- (a) I consider that the FtT failed to engage, sufficiently or at all, with all material evidence, in a case where the evidence adduced was voluminous, the history was protracted and not without its subtleties and complexities and, colloquially, the devil lay in the detail. As a result of this primary failure, there was a related failure to make necessary findings on material factual issues. This relates primarily to the so-called “second” period viz November 2012 to May 2013, in respect whereof there is a paucity of findings in the determination. I make clear my analysis that while there is a series of finding in [6] – [11] of the determination, these, carefully and contextually examined, all belong to the “first” period, viz that pre-dating November 2012.
- (b) The determination also suffers from a lack of clarity in the findings which were purportedly made in respect of the second period, in [12]. In particular, the final part of this paragraph is couched in opaque terms and rehearses findings which are formulated as alternatives on a self-evidently key issue.
- (c) I further consider that the FtT failed to apply the correct test, which the Court of Appeal has determined to be that the touchstone of “sole responsibility” is the continuing control and direction by the UK parent concerned in respect of the important decisions about the upbringing of the relevant child: see the convenient summary in TD - v - Entry Clearance Officer, Sana’a [2006] UK AIT 00049, at [50]. In its determination, the FtT did not identify the relevant authorities (which were binding on it), did not formulate the governing test and did not purport to apply it.

3. For these reasons, the second and third grounds of appeal are established. I consider that, having regard to the conclusions which I have expressed above, the first ground of appeal, a discrete complaint of procedural unfairness, does not, logically, arise.

DECISION AND DIRECTIONS

4. I set aside the determination of the FtT.
5. At the conclusion of the hearing, I enunciated the following case management directions:

- (a) The appeal will be remitted to a differently constituted FtT for the purpose of remaking the decision.
- (b) Any application on behalf of the Appellant to adduce further evidence will be made in accordance with the relevant procedural rule within 28 days of 16 July 2014.
- (c) The relisting will take place not before 01 September 2014.
- (d) A Thai interpreter will attend.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 16 July 2014