



IAC-FH-AR-V1

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

Appeal Number: OA/60389/2009

THE IMMIGRATION ACTS

**Heard at Field House
On 28th October 2014**

**Decision and Reasons
Promulgated On 31st
October 2014**

Before

**THE HON. MR JUSTICE DAVIS
UPPER TRIBUNAL JUDGE GOLDSTEIN**

Between

NMP

Appellant

and

THE ENTRY CLEARANCE OFFICER -BANGKOK

Respondent

ANONYMITY ORDER MADE

Representation:

For the Appellant: Miss N Braganza, Counsel, instructed by Stevens Machi Solicitors

For the Respondent: Mr R Hopkin, Home Office Presenting Officer

DECISION AND REASONS

1. This an appeal by a young man to whom I shall refer to as P against a decision of the Entry Clearance Officer in Bangkok. A very brief history is that his mother arrived in this country in 2002 and she has been here ever since. She has another child in this country and that child is a British citizen.
2. The Entry Clearance Officer was presented in 2009 with an application by P to join his mother and his brother in the United Kingdom. The application was expressed to be outside the Immigration Rules and on the basis of his Article 8 rights. The application was refused. There was a request for reconsideration. The matter was reviewed by an Entry Clearance Manager. The refusal was maintained. On 21st October 2010 the First-tier Tribunal, Judge Sweet, promulgated the determination in his appeal against that refusal and dismissed the appeal.
3. The history since then has been tortuous. P appealed to the Upper Tribunal, was refused permission and the refusal of permission was the subject of an application for judicial review. That judicial review took some time to be heard. It was eventually determined by His Honour Judge Thornton QC sitting as a Deputy High Court Judge on 21 November. The case is reported at the neural citation [2012] EWHC 4384 (Admin). The full terms of the decision are available at that citation. As a result of Judge Thornton's ruling the application for leave to appeal now was granted. All of that took some considerable time, quite why is not absolutely clear, but in any event here we are today considering the appeal against Judge Sweet's determination reached over four years ago.
4. We do not propose to review in any detail the factual findings of Judge Sweet. To do so would be to burden the Tribunal to which we are going to remit this case with unnecessary information. The case will be remitted for a de novo hearing before the First-tier Tribunal. We do that principally because we are quite satisfied, both on our own reading of the decision of Judge Sweet and after consideration of that decision by the Administrative Court, that the reasoning adopted by Judge Sweet in relation to the Article 8 claim was wholly deficient. It simply did not address the issues at all. Most significantly the concluding sentence of the only paragraph in the determination which concerns Article 8 reads as follows:

"In any event there is no cogent reason why the sponsor [P's mother], and her other son [the boy who has British citizenship] cannot live in Vietnam to continue her life in that country."
5. That sentence on its own deals a fatal blow to the determination. It cannot be right that a British citizen should have to go and live in Vietnam. In any event that British citizen has a father in this country and to make an order which would in effect involve that boy going to live in Vietnam would interfere very substantially with the Article 8 rights of the father. The connotations are endless. The finding of the judge is simply unsupportable.

6. We do not address in detail whether this is a case in which the First-tier Tribunal on its re-determination will find that this is a case in which the appellant falls within the Immigration Rules. We suspect that it will not but it would not be helpful to the First-tier Tribunal to be trammelled by some restrictive remittal of the case. The First-tier Tribunal will be considering the matter entirely de novo. Whether they consider the case as falling within the Rules, which we think is highly unlikely, or a case that is an exceptional case outside the Rules, which is possible, or a case that falls within Article 8, which is equally possible, will be a matter for the new First Tier Tribunal judge. For the purpose of the rehearing in the First-tier Tribunal it will not be helpful at all for us to limit the scope of that hearing and therefore for all the reasons we have given we quash the decision of Judge Sweet and we remit the case to the First-tier Tribunal for a rehearing. The case of course will not be heard before Judge Sweet.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. We make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to protect the identity of the Appellant.

Signed
2014
The Honourable Mr Justice Davis
(Sitting as a Judge of the Upper Tribunal)

Date 30 October