



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

Appeal Number: IA/46640/2014

THE IMMIGRATION ACTS

**Heard at Field House
on 19 August 2015**

**Determination
Promulgated
On 22 December 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LEONARD ALVIN CENTENO
(Anonymity direction not made)

Respondent

Representation

For the Appellant: Mr Tufan Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Somal, promulgated on the 19 March 2015 following a hearing at Nottingham, in which the judge allowed the appellant's appeal against the refusal of leave to remain outside the Immigration Rules and direction for his removal made pursuant to section 47 Immigration, Asylum and Nationality Act 2006.
2. The Secretary of State challenges the decision asserting Judge Somal failed to consider the statutory provisions set out at section 117 Nationality Immigration and Asylum Act 2002 properly. The date of hearing was 9 March 2015 after the commencement date of 28 July 2014. Dube [2015] UKUT 00090 refers. This is relevant as the entirety of the decision relates to the appellants private life formed at a time

his immigration status was precarious to which little weight should be given according to the statutory provisions.

3. The decision also arguably fails to weigh in the balance the extent of the care requirements assessed by Social Services for the appellant's mother who does not require the presence of the appellant, her son, all day. The decision also fails to mention the fact the report refers to the appellant's mother employing her own carer.
4. The determination is arguably flawed in that it fails to consider and make adequate findings on :
 - a. The Secretary of State's case.
 - b. Alternative care provisions.
 - c. Whether the Immigration Rules provide a route for leave as a carer and, if so, why the appellant is unable to succeed under the same.
 - d. A detailed analysis of the way in which the competing interests are balanced with due regard to the statutory provisions.
 - e. The documentary evidence
5. There does not appear to be any evidence of the impact upon the appellant's mother if he is removed from the UK. The finding at paragraph 20 that she would be living in desperate conditions is not adequately reasoned in light of the Social Services report. It is not adequately explained why her sons absence would have a grave impact upon the quality of his mother's life and why this is sufficient for the appeal to be allowed. There is a greater focus on the case advanced by the appellant and little detail of that relied upon by the Secretary of State.
6. It is not clear both parties received a proper hearing. The determination shall be set aside with no findings preserved.
7. The appeal shall be remitted to Nottingham Hearing centre to be heard by a judge other than Judge Somal on 6 January 2016.

Decision

8. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the Nottingham Hearing Centre.**

Anonymity.

9. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson
December 2015

Dated the 10