



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/06028/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 May 2017**

**Decision Promulgated  
On 31 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MASTER LUCAS VINICIUS DOS SANTOS SILVA  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Kotas Senior Presenting Officer  
For the Respondent: Mr Singer of Counsel

**DECISION AND REASONS**

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondent is a citizen of Brazil born on 4 April 1999. However, for the sake of convenience, I shall continue to refer to the latter as the “appellant” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellant’s appeal to the First-tier Tribunal was against the decision of the respondent dated 24 February 2015 to refuse his application for indefinite leave to remain under Appendix FM of the Immigration Rules.
3. A Judge of the First-tier Tribunal, Page gave the Secretary of State permission to appeal against the decision stating that it is arguable the

Judge erred in finding that there are serious and compelling family or other reasons which make the appellant's exclusion from the United Kingdom undesirable.

4. Thus, the appeal came before me.

#### **Decision on the error of law**

5. Having considered the decision as a whole, I find the Judge's consideration of the appellant's appeal in respect of the Immigration Rules is materially flawed and based on sympathy for the appellant and not on the law. It was accepted that the sponsor did not have sole responsibility for the appellant, living in Brazil with his mother, as he was. The appellant's mother has always looked after the appellant and the appellant's father provided financial assistance for the appellant's upkeep.
6. The Judge essentially based his decision on the appellant's evidence at the hearing. The Judge considered the appellant's evidence that he now wants to live with his father in this country and go to college. The fact that the appellant wants to live with his father does not address the issue as to whether his best interests can no longer be met in Brazil, staying with his mother. The Judge did not identify in the decision what exactly constitutes the best interests of a child. Had he done so, he would have found that the best interests of a child lie in being provided with housing, food, education and having the care of a parent. The appellant has all these essential ingredients living in Brazil with his mother. He also did not identify how the appellant's best interests, to continue to live with his mother in Brazil as he has done for the past 17 years, would be compromised by his exclusion from the United Kingdom. Although I accept that the appellant was much younger when he made the application but my reasoning continues to apply even for a child of 15 years. The appellant's father came to the United Kingdom and left the appellant with his mother in Brazil which shows he was confident that he would be looked after by her.
7. The evidence was that the appellant lived with this mother and sometimes with his grandparents in Brazil. They should have demonstrated to the Judge that the appellant has other close relatives in Brazil and not only his own mother, to provide him with care. The judge did not identify any evidence which suggested that the appellant was not being adequately looked after in Brazil. The evidence was that the appellant was being looked after in Brazil, even if he did not have his mother's complete attention and was not her priority, as she had a new partner. The appellant was about 15 and is now 17 years old and therefore the level of a mother attention changes and is a natural progression as the child gets older and near adulthood. This cannot be considered compelling and serious such as to make his exclusion in the United Kingdom undesirable.

8. The Judge found the appellant's evidence to be truthful and credible and this no doubt was the case but the success or failure of this appeal does not rest on the credibility of the appellant. The Judge gave no reasons for finding that the appellant circumstances have changed and his exclusion from this country has now become serious and compelling.
9. The evidence that the Judge of relied upon was that the appellant now wants to go to college and wishes to do so this country. Quest for an education in this country, cannot be deemed to be serious and compelling circumstances unless of course the appellant can demonstrate that there is no education available to him in Brazil, which is not the case.
10. While I accept that the Judge must consider the child's views, it is still incumbent on him to give reasons for why he believes that the appellant's best interests will be for him to live in the United Kingdom instead of continuing to live in Brazil where he has lived all his life. Each case has its own fact-rich issues and the appellant's evidence that his mother's main priority is now her partner, does not constitute serious and compelling circumstances, such as to make his exclusion from this country undesirable. I find that the Judge's reasoning was not in accordance with the jurisprudence when he found that the best interests of the child is to live in his country with his father. He also had to find that the appellant's best interests were no longer being catered for in Brazil.
11. Although the Judge referred to the case of **Mandeba**, he did not apply the principles and the guidance given in that case. The appellant in the case **Mandeba** was an orphan and the Court of Appeal found that his best interests are being met in his home country. The appellant, on the other hand, is not an orphan and has his mother and grandparents who have always looked after him. His best interests were being met in Brazil and continue to be and do not change because his father now wants him to live with him in this country.
12. I conclude that the Judge materially erred in law in his evaluation of the appellant's appeal pursuant to the Immigration Rules and I therefore set aside the decision. I remake the decision and dismiss the appellant's appeal. This resolves the appeal.

### **DECISION**

The secretary of State's appeal is allowed.

I dismiss the appellant's appeal

Signed by

Mrs S Chana  
A Deputy Judge of the Upper Tribunal

This 26th day of May 2017