



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/03606/2020

THE IMMIGRATION ACTS

**Heard at Field House
Remotely by Microsoft Teams
On 14 January 2022**

**Decision & Reasons
Promulgated
On 1 February 2022**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MR ALPHA OUMAR SOW
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Tobin, Counsel instructed by A & P Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULES 39 & 40 (1) and (3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Sweet sent on 14 May 2021 June 2021, dismissing the appellant's appeal against the respondent's decision dated 16 January 2020 refusing his application for entry clearance

under Appendix FM of the immigration rules as the child of a settled person.

2. At the outset of the appeal Ms Everett, for the respondent, conceded that the decision was unsafe and unsustainable because of a failure to make discrete factual findings. She also conceded that the judge had failed to consider the best interests of the affected child and had failed to consider paragraph 297(i)(f) of the immigration rules.
3. I am in agreement that the decision is vitiated by error and is unsafe for the following reasons.
 - i. At [12] to [16] the judge refers to a number of concerns in respect of the sponsor's evidence but having set out what the concerns were, failed to make any discrete factual findings in respect of the relevant issues, particularly the current circumstances of the appellant. It is not possible to discern from the decision where the judge finds the appellant is currently living, how he is being supported and what the relationship is between the appellant and the sponsor or between the appellant and his mother. Ms Everett for the respondent conceded that there was significant ambiguity in the decision.
 - ii. There is a failure by the judge to assess whether there are any serious and compelling family circumstances and the reasons for this.
 - iii. There is a failure to consider the best interests of the child.
 - iv. The judge does not make findings on whether family life exists between the sponsor and the appellant and does not go on to make a proportionality assessment balancing the public interest against the rights of the appellant. The judge does not consider the issue of unjustifiably harsh consequences.
4. I am satisfied that that the parties consent that there has been a material error of law and I have outlined the reasons for this above. The decision is unsafe and cannot stand.

Disposal

5. The respondent accepts that the appropriate way to dispose of this appeal would be to remit the appeal to the First-tier Tribunal to be heard de novo and for fresh findings of fact to be made. This is in my view appropriate because new factual findings are required in respect of all of the issues in dispute.

6. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing, but I have summarised my reasons for the benefit of the parties.

Notice of Decision

7. The decision of the First-tier Tribunal involved the making of an error of law.
8. The decision of the First-tier Tribunal is set aside, and the findings of the First-tier Tribunal are set aside in their entirety.
9. The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than First-tier Tribunal Judge Sweet.

Signed

Date: 17 January 2022

R J Owens
Upper Tribunal Judge Owens