



IAC-FH-AR-V1

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

Appeal Number: IA/23356/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 July 2015**

**Decision & Reasons Promulgated  
On 22 July 2015**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON  
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**ESTHER ASEM AMOAH  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Jibowu, Counsel instructed by MJ Solomon and Partners

For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against a decision of First Tier Tribunal Judge Tiffen which was promulgated on 12 February 2015. This is the *ex tempore* decision in respect of the appeal. The appellant is a citizen of Ghana. She is the mother of a daughter, a British citizen.
2. We considered various grounds of appeal in respect of this case which were set out in a detailed document which had been filed with Tribunal and upon which permission to appeal was granted by Judge Fisher on 14

April 2015. The appellant seeks leave to remain in the United Kingdom, particularly relying on the Immigration (EEA) Regulations 2006.

3. In addition to the documents previously filed, the appellant's Counsel provided us this morning with a skeleton argument which refined the issues required to be dealt with, the original grounds having been set out in much more detail. Having explored the issues with the parties, it appears that the matters can be considerably summarised.
4. The grounds really amount to the following. Firstly, the appellant contends that the First Tier Tribunal Judge materially erred in law when she had said that she was restricted to considering circumstances appertaining at the time of the respondent's decision. That statement by the judge is indeed wrong because this was an appeal in respect of the EEA Regulations and there is no such restriction to consider matters only as at the date of the decision. The appropriate date for considering matters in respect of the 2006 Regulations is at the date of the hearing.
5. However, even though the judge had said what she did at paragraph 8 of her decision and reasons, it is clear that the judge did not actually restrict herself in terms of the matters which she had gone on to consider. It is quite clear that she did in fact consider matters as at the date of the hearing. Having explored this with the appellant's Counsel, it is quite clear that although the judge cited what appears to be standard wording at paragraph 8 of her decision, she did in fact take all matters into account as at the date of the hearing.
6. That therefore deals with paragraph 1 and ground 1 of the appellant's grounds. We conclude that there was no material error of law. In reality, this was the primary ground relied upon by appellant.
7. Secondly, the grounds of appeal relate to arguments in respect of the appellant's claim to a derivative rights of residence pursuant to Regulation 15A(7) and Regulation 18A of the Immigration (EEA) Regulations 2006. The Judge said she accepted that the appellant was a primary carer of the child. She had said that at paragraph 19 of her decision, "As indicated at the hearing I am satisfied that the appellant is the primary carer of the child....".
8. However, the judge went on to say at paragraph 19: "... But the appellant must also satisfy me that the child's father is not in a position to care for the child if the appellant was forced to leave the United Kingdom." This is an important part of the case and a central feature of the judge's reasoning and findings. It was not enough for the appellant to have been the primary carer of her child. More was required. Specifically it was necessary for the appellant to show that her child (the British citizen) would be unable to reside in the UK if the appellant was forced to leave the United Kingdom.

9. Paragraph 19 of the judge's decision is reflective of the Immigration (EEA) Regulations 2006. The definition of "Primary Carer" is set out at 15A(7) of the Regulations,
  - 15A(7) P is to be regarded as a primary carer of another person if
    - (a) P is a direct relative or a legal guardian of that person; and
    - (b) P-
      - (i) P is a person who has primary responsibility for that person's care or
      - (ii) shares equally the responsibility for that person's care with another person who is not an exempt person."
10. 15A (4A) of the Immigration (EEA) Regulations 2006 states as follows:
  - 4A: P satisfies the criteria in this paragraph if
    - (a) P is the primary carer of a British citizen (the relevant British citizen);
    - (b) the relevant British citizen is residing in the United Kingdom, and
    - (c) the relevant British citizen will be unable to reside in the UK or in another state if required to leave."
11. Therefore the question for particular focus was whether or not the father of the child would be in a position provide the necessary care that the child require if the appellant was forced to leave the United Kingdom. It is Regulation 15A(4A)(c) that the appellant failed to prove.
12. It was therefore this aspect that the judge particularly dealt with at paragraphs 19 and 20 of her decision and reasons. The appellant's central complaint in her grounds and which is repeated in some detail is that the judge firstly (this is set out at paragraph 3 of the grounds) failed to acknowledge and analyse the appellant's undisputed evidence and, secondly, having accepted that the appellant was the primary carer, she sought to undo the finding which she had made at paragraph 19 in respect of the appellant being the primary carer.
13. The assertion in the grounds is wrong. That is because the judge makes clear at paragraph 20 that she considered the appellant's credibility. She also made it clear that she considered the evidence and credibility of the appellant's sister, and indeed that of a friend who claimed to support the appellant. The judge made it plain that she had also had in mind the letters of support which had been provided. She concluded that little weight could be given to them. The judge was entitled to come to the conclusions that she did in respect of the evidence placed before. The judge explained why she attached little weight to the evidence concluding that, "There is no evidence that the child could not be adequately cared for by his sister either alone or in conjunction with the Appellant's sister and her other family members in the United Kingdom".

14. It is important to recall the basis of the respondent's Reasons for Refusal Letter. That had set out in clear terms why the appellant's application had been refused. It was said in the plainest terms that insofar as the appellant's evidence is concerned, that it was of a very limited nature. Therefore the appellant was put on notice that she needed to set out significant evidence to deal with the respondent's decision. As the respondent's decision notes at page 2 of 5 of the decision:

"You have not provided evidence to why the child's father is not in a position to care for the British child if you are forced to leave the United Kingdom and there is insufficient evidence to show that the British citizen child would be unable to remain in the United Kingdom/EEA if you are forced to leave.

The supporting statements provide a suggestion that [the father] left you shortly after the child was born and does not want anything to do with the child.

It should be noted however that any unwillingness to assume care responsibility is not by itself, sufficed for the claimed primary career to assert that another direct relative or guardian is unable to care for the British citizen.

In making this assessment, the burden of proof remains on the applicant ....."

15. Therefore the appellant was made well aware that she had to provide the necessary evidence to enable her appeal to be successful. She was also well aware that the burden of proof was on her. She failed to provide that evidence to the required standard and the judge has provided sustainable reasoning as to why the appeal had to be dismissed.
16. We explored with the appellant's Counsel which part of the Court of Appeal's decision in R (Iran) that he had particularly sought to rely upon. In his submissions he said that this was a case in which the credibility findings were a 'bit harsh'. Even if that was a slip of the tongue, mere disagreement with the judge's findings are clearly not sufficient as the Court of Appeal's judgment makes abundantly clear. It would have to be shown that no other judge could reasonably have come to the findings that this judge had come to. It is clear however that this hurdle has been missed by a significant margin. The findings are sufficiently and clearly reasoned. In the end the grounds amount to no more than a mere disagreement with the judge's decision.
17. In the circumstances, in relation to the grounds which deal with credibility, there is nothing to them that enables me to conclude that there was a material error of law. I am unable to detect any material error of law in the findings.
18. Thirdly, the grounds state that the judge considered the wrong and irrelevant law. This relates to Paragraph 276ADE of the Immigration Rules. Again, having explored this with the appellant's Counsel this morning, it is quite clear that the judge had only considered the matters which are now

complained of because they were the grounds raised by the appellant's Counsel at the hearing before her. The judge referred to Paragraph 276ADE at paragraph 24 of her decision.

19. In fact there was no appeal before the judge in respect of the Immigration Rules or Article 8. As was conceded during the submissions before us, this always was and indeed is, an appeal in respect of the EEA Regulations only. Therefore whatever might have been said by the judge in respect of the Immigration Rules and Article 8 is no more than obiter in any event. There was no Immigration Rules or Article 8 ECHR appeal so the Immigration Rules and Article 8 aspects could not be considered. It is an entirely a matter for the Appellant, but if she wishes to make an application for leave to remain pursuant to the Immigration Rules or Article 8 ECHR then she can do that with the appropriate application to the Secretary of State. That matter is not before us though and so we cannot deal with it.
20. Finally, it is said in the grounds of appeal that there was a failure in the judge's decision to take into account that she was dealing with the appellant's daughter rather than a son and it is said that there was constant reference to the child having a masculine gender. Again having explored this with the appellant's Counsel it is clear that in the very many paragraphs that the judge did refer to the appellant's child it is in the feminine gender with "she" and "her", having been used albeit in one paragraph, paragraph 5, there is reference to "him". We do not see that there is any material error of law that can arise by that unfortunate slip which has occurred, but it is no more than a slip. It is not a material error of law.
21. In the circumstances, taken individually or cumulatively, there is no sufficient basis in the grounds of appeal upon which this application can succeed.

## **Conclusions**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The determination of the First Tier Tribunal stands and the appeal remains dismissed.

## **Anonymity**

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. We do not make an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Deputy Upper Tribunal Judge Mahmood

**TO THE RESPONDENT**  
**FEE AWARD**

The appeal has been and therefore there can be no fee award