



IAC-FH-CK-V1

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

Appeal Number: IA/22189/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 26<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MRS MICHELLE VANESSA ORLEAN DAVIS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Anifowoshe, Counsel instructed by Apex Solicitors

For the Respondent: Ms E Savage, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Jamaica, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 7<sup>th</sup> October 2013 to refuse her application for leave to remain on the basis of her private and family life in the UK. First-tier Tribunal Judge CM Phillips dismissed the appeal. The Appellant now appeals with permission to this Tribunal.

2. The Grounds of Appeal to the Upper Tribunal put forward two main grounds on which it is contended that the First-tier Tribunal Judge erred in law. It is contended in the first ground that the judge did not properly assess documentary evidence put forward in relation to the Appellant's spouse's employment to support the contention that the Appellant was entitled to a derivative right of residence under Regulation 15A of the Immigration (EEA) Regulations 2006 (hereinafter the EEA Regulations).
3. At the hearing before me Ms Anifowoshe accepted that this ground could not succeed as, even if the Appellant could demonstrate that her EEA national spouse (who has been in France since 2011) had previously resided in the UK as a worker, it could not be established that the child was in education in the UK at a time when the EEA national parent was in the United Kingdom as required by Regulation 15A(3). Ms Anifowoshe properly conceded this issue as the Appellant cannot succeed under Regulation 15A and this Ground of Appeal has no substance.
4. The second Ground of Appeal is that the First-tier Tribunal Judge erred in her assessment of Article 8 of the ECHR. It is contended that the judge's approach was too narrow in her assessment of the family life between the Appellant and her adult daughter and did not take account of the circumstances of the family which are that, although the Appellant's daughter is an adult, she lives with her mother and half-sibling. It is further contended that the judge erred in his application of the case of **Devaseelan [2004] UKIAT 000282** in considering the previous decision of First-tier Tribunal Judge Coutts relating to this Appellant. Judge Coutts had allowed the appeal of the Appellant's daughter outright and dismissed the Appellant's appeal under Article 8 but allowed it to the extent that the removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006 were not in accordance with the law.
5. Before me Ms Anifowoshe contended that the judge erred in relation to the assessment of the family life with her adult daughter. The judge dealt with this issue at paragraph 78 of the decision. Ms Anifowoshe contended that the judge's finding at paragraphs 78 and 79 conflicts with the findings made by Judge Coutts. She referred to paragraph 31 of the decision of Judge Coutts where the judge said:

"I accept that my decision places the first Appellant in a different situation from that of her daughter, the second Appellant. However, the second Appellant is now of majority and is not dependent upon the first Appellant; their family life is able to continue at a distance when the first Appellant leaves here; the same applies in respect of contact with her brother, Enzo. Alternatively, the second Appellant is able to make her own informed decision as to what is best for her; she may therefore decide to leave the United Kingdom with her mother and brother, returning to Jamaica or relocating to France; however, that is a matter for her."
6. First-tier Tribunal Judge Phillips said at paragraph 78:

"The Appellant's daughter is older than she was at the time of the previous determination when it was found that there was no Article 8 family life with the Appellant and the EEA child. The Appellant's daughter is working, has a partner, a

father in the United Kingdom with whom she is in contact and she is expecting a child. Although she said that she lives with the Appellant she also said that she has a partner and the Appellant is close so that she sees them every day. I find that there is no Kugathas [2003] EWCA Civ 31 dependency making the relationships between the Appellant and her daughter and the EEA child and his half-sibling more than that normally enjoyed and which do not amount to Article 8 family life.”

7. Judge Phillips went on to find at paragraph 79: “I find, as the previous First-tier Tribunal Judge did that the Appellant and her EEA child do not share Article 8 family life with the Appellant’s daughter.” Ms Anifowoshe contended that the findings of First-tier Tribunal Judge Phillips at paragraphs 78 and 79 contradict those made by First-tier Tribunal Judge Coutts at paragraph 31.
8. I do not accept that submission. It is clear from reading all of paragraph 31 that although Judge Coutts referred to “their family life” he did not accept that the relationship between the Appellant and her daughter amounts to a relationship that comes within the terms of Kugathas being one that is over and above the normal dependency between a parent and their adult child. There is no conflict between the findings made by Judge Phillips and those made by Judge Coutts.
9. Judge Phillips properly applied Devaseelan, taking into account the findings of the first judge and going on to make further findings in relation to the up-to-date position since that first hearing at paragraphs 71 to 78 in relation to family life and at paragraphs 80 to 100 in relation to private life.
10. Ms Anifowoshe further contended that the judge failed to properly take account of the relationship between the Appellant and her son. She submitted that the judge failed to take into account the fact that the Appellant’s son, who is a French national, does not need to satisfy the Immigration Rules. She submitted that the judge refers at paragraph 76 to the family reuniting in France but failed to take into account the fact that the Appellant is a Jamaican national and cannot enter France from the UK. I asked Ms Anifowoshe if this matter had been put before the First-tier Tribunal and she accepted that it had not. The judge had no evidence on which to make any finding that the Appellant could not enter France in order to be reunited with her husband there. The judge could not have made a finding to that effect in the absence of evidence. Despite her assertion Ms Anifowoshe did not produce any evidence to the effect that the Appellant is unable to obtain the necessary permission to enter France and I do not accept that this is a relevant consideration in the absence of evidence to that effect before the judge.
11. I have considered the determination of the First-tier Tribunal as a whole and I am satisfied that the judge made clearly sustainable findings which were properly reached. It was open to the judge to find that there was no family life between the Appellant and her adult daughter. The judge considered all of the circumstances of the child and the family and reached sustainable conclusions and I am satisfied that no error of law has been identified in the decision.

12. Ms Anifowoshe finally submitted that as the child is an EEA national the Appellant has a right to remain in the UK in accordance with the decision in Case c-200/02 Chen [2004] ECR I-9925. However, I indicated that this issue had not been put to the First-tier Tribunal Judge and that in any event that issue was not before me.

**Notice of Decision**

The decision of the First-tier Tribunal Judge did not contain a material error of law.

The decision of the First-tier Tribunal Judge shall stand.

No anonymity direction is made.

Signed

Date: 22<sup>nd</sup> January 2016

Deputy Upper Tribunal Judge Grimes

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 22<sup>nd</sup> January 2016

Deputy Upper Tribunal Judge Grimes