



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

Appeal Number IA/11549/2014

**THE IMMIGRATION ACTS**

Heard at Centre City Tower  
On 28<sup>th</sup> May 2015

Decision and Reasons Promulgated  
On 10<sup>th</sup> June 2015

Before

**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

**CHARLOTTE NTUNAH ANTHONY**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr N Ahmed (Counsel, instructed by Jusmount & Co, Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant had applied for a derivative residence card under the EEA Regulations as the carer of a British national child. The application was refused and the Appellant's appeal dismissed for the reasons given in the decision of First-tier Tribunal Judge Pooler promulgated on the 26<sup>th</sup> of June 2014. It was accepted that the Appellant was the carer of her child and that the child was a British national but the Judge found that it had not been shown that the child would be unable to reside in the UK without her.

2. The Appellant sought permission to appeal to the Upper Tribunal in grounds of the 3<sup>rd</sup> of July 2014. It was argued that the Judge had not had regard to the accepted evidence that the child's father was not providing maintenance and had no contact with the child and that irrelevant matters had been considered. It was argued that the evidence showed that the child would not be able to reside in the UK without the Appellant and the decision was perverse. Permission was granted by First-tier Tribunal Judge Mailer on the 6<sup>th</sup> of November 2014 on the basis that the Judge had arguably placed too high a standard of proof on the Appellant.
3. The Secretary of State's rule 24 response noted the assertion made in respect of the standard of proof and that at paragraph 17 of the decision the Judge had accepted the Appellant's evidence. However, the Judge had found that the steps that the Appellant had taken were not sufficient and the Secretary of State's position is that this was open to the Judge and the grounds amounted to no more than a disagreement.
4. The submissions made at the Upper Tribunal hearing are set out in the Record of Proceedings and are referred to where relevant below. In summary both parties maintained the positions that are set out in the grounds of application and the Secretary of State's rule 24 response.
5. The fact that an Appellant is the main or sole carer of a British national child is not by itself enough to meet the requirements of Regulation 15A(4A) of the EEA Regulations. It is noted in the Refusal Letter that unwillingness to provide care is not by itself sufficient and it would have to be shown why the child's father could not assume responsibility. To succeed an Appellant has to show that the child will not be able to live in the UK or another EEA state, a lack of contact with a former partner does not, by itself, answer that question and may lead to a finding that the burden of proof has not been discharged.
6. That is clearly where the Judge focussed his attention when considering the evidence. In paragraph 16 he observed "The question for this Tribunal is whether the appellant has done sufficient to prove, on the balance of probabilities, that her child would be unable to reside in the UK or another EEA state if she were required to leave. I caution myself against expecting too much by way of evidence or imposing an improperly high standard of proof..." It is clear from that paragraph that he had in mind the correct standard of proof and was aware of the pitfalls that may arise.
7. Paragraph 17 sets out the Judge's approach and having considered the contents I find that the reasons given for finding that the Appellant had not discharged the burden of proof were sufficient and do not show that he had disregarded the self directions given in the preceding paragraph.
8. The Judge was entitled to have regard to the geography of the area where the Appellant and the child's father lived and the proximity of the different locations. Her claim about the advice received from the Local Authority was rejected and this was in the context of the authority having had

contact with the father and his mother. The basic fact that he had no contact and paid no maintenance did not answer the question about whether the child would have to leave the UK and he was entitled to find that the evidence of the Appellant did not show sufficient+ had been done to track him down or that he would not be able to care for their child or would not do so.

9. I find that the Judge correctly identified the issues involved, applied the correct burden and standard of proof and made findings that were justified on the evidence presented. The decision contains no error of law and so it stands as the disposal of the appeal in this case.

## **CONCLUSIONS**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### **Anonymity**

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

### **Fee Award**

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal Parkes (IAC)

Dated: 9<sup>th</sup> June 2015