



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

Appeal Number: EA/02478/2015

THE IMMIGRATION ACTS

**Heard at Manchester IAC
On 27th July 2017**

**Decision & Reasons Promulgated
On 31st July 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

[Z A]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Atuegbe of R and A solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. On 1st June 2017, I granted permission to the appellant to appeal the decision of First-tier Tribunal Judge Bell dismissing his appeal against the decision of the respondent to refuse to issue him with a Derivative Residence Card as the primary carer of a British Citizen child resident in the UK. Neither representative objected to my determining this appeal.

2. The First-tier Tribunal judge found, and there was no challenge to these findings by the respondent:
 - * [ZA] is the primary carer of the child, [U], date of birth [] 2012;
 - * the child has lived with [ZA] on a full time basis since January 2016;
 - * they live in Cheetham and the child's mother lives in Oldham;
 - * [U]'s mother has to look after her 19 year old schizophrenic son, who could be hard to control at times and aggressive on occasions. He requires 24 hour care;
 - * [U]'s mother also has two other children aged 16 and 13 who she looks after (they are not [ZA]'s children);
 - * [U] sees his mother every couple of weeks;
 - * There is a strong bond between [U] and his father; [U] would be unhappy about moving to live with his mother.
3. [U]'s mother gave evidence that she would be unable to look after [U] as well as her other three children. There was no challenge to that evidence and Judge Bell found her a credible witness.
4. Judge Bell refers to family proceedings and refers to a family court order making clear that there were no safeguarding issues as regards the oldest son. Mr Atuegbe was unable to confirm that leave of the family court had been obtained to disclose the family court proceedings and orders but in any event, given the findings of the judge (as set out above), made on the basis of the oral and other documentary evidence before her, they played little part in the decision save for the issue of safeguarding concerns.
5. The judge quoted the correct regulation under which the decision was to be taken, namely regulation 15A(4A) which states as follows:

P [i.e. the appellant] 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 living in the United Kingdom; and*
 - (c) *The relevant British Citizen would be unable to reside in the UK or in another EEA State if P were required to leave.*
6. The First-tier Tribunal judge, surprisingly in Mr Harrison's words, concluded that [U] would not be required to leave the UK if [ZA] left the UK. The only basis upon which the judge appears to have reached that conclusion, given her other findings and acceptance of the evidence before her, is that there were no safeguarding issues with regard to the child. It is unclear on what basis that finding was made, given that if reliance could be placed upon the family proceedings record given that leave of the court had not been obtained to disclose, that information was considerably out of date by the time of the hearing before the First-tier Tribunal judge. Furthermore it is not a question of whether there are safeguarding issues but whether, in fact, the child would be required to leave the UK.
7. The totality of the evidence before the judge, which she accepted, was that the mother would not be able to cope with looking after this young child in addition

to her schizophrenic son and other two minor children. Fortnightly contact is not an indication that the child could move home.

8. I am satisfied the First-tier Tribunal judge erred in law in her evaluation of the evidence such that the decision is set aside to be remade.
9. On the basis of the evidence that was before the First-tier Tribunal and the findings made by the First-tier Tribunal there can only be one answer, namely that the appellant is successful in his appeal. He is the primary carer of a British citizen child who is residing in the UK and who would be required to leave the UK with [ZA] if [ZA] were to leave the UK.
10. I allow the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision is set aside.

I re-make the decision in the appeal by allowing it.



Date 27th July 2017

Upper Tribunal Judge Coker