



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

Appeal Number: IA/01331/2014

THE IMMIGRATION ACTS

Heard at Field House

Determination

Promulgated

On 31 July 2014

On 14 July 2014

Judgment given orally

Before

UPPER TRIBUNAL JUDGE COKER

Between

LUCY ASAMOAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Garrod, Counsel, instructed by Justice and Law Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of Lucy Asamoah, a Ghanaian citizen. She applied for a derivative residence card as the primary carer of a British citizen resident

in the UK. That application was refused on 18 December 2013 for reasons set out in a letter dated the same date. She appealed and her appeal was heard at the First-tier Tribunal on 8 April 2014 and was dismissed. The First-tier Tribunal Judge dismissed the appeal under the 2006 Regulations and also found that the refusal to grant the appellant a residence card did not put the UK in breach of its obligations under Article 8 of the ECHR.

2. Permission to appeal was sought and granted on 16 May 2014. The Secretary of State by way of a Rule 24 response dated 4 June 2014 asserted that the appellant was not a credible witness and the judge had been left with a lacuna in the evidence as to how the child's father would behave if the appellant were removed. The Secretary of State drew attention to the findings of the First-tier Tribunal Judge that the child's father cared for the appellant in practical ways and that the findings were logical and sustainable as a result of that.
3. The requirement to issue a derivative residence card comes from the Immigration (European Economic Area) Regulations 2006. Under Regulation 18A the Secretary of State is required to issue a person with a derivative residence card on application and production of a valid passport and proof that the applicant has a derivative right of residence under Regulation 15A. So far as Regulation 15A is concerned the relevant Regulation is 15A(4A), namely that if Miss Asamoah satisfies the criteria that she is the primary carer of a British citizen, that British citizen is residing in the UK and that the British citizen would be unable to reside in the UK or in another EEA state if she were required to leave. According to Regulation 15A(7) she is to be regarded as a primary carer if she is a direct relative of the child and if she is the person who has primary responsibility for that person's care.
4. The issue in this case is does she or does she not have primary responsibility for this child? Is she the primary carer of this child who it is accepted is a British citizen. She and a relative gave evidence before the First-tier Tribunal Judge. On the basis of that evidence and the documentary evidence that was produced the judge made adverse credibility findings as to her relationship with Mr Awari in terms of whether he was an uncle or a cousin, whether she had been trafficked and how she had met Mr Awari, whether or not she told the solicitors that she had been trafficked, the circumstances surrounding the registration of the child's birth and the involvement of Mr Awari in that registration, and the application for and subsequent issue of the child's British passport.
5. The appellant claims that the father of the child has nothing to do with the child. The judge on the basis of the evidence before him did not accept that her account was credible in terms of the circumstances surrounding the child's birth or the continued interest of the father.
6. The judge, however, on the basis of not accepting the circumstances around the registration of the child and the application for a passport

because of the other adverse credibility issues, made what could be described as a rather massive leap to say that that therefore meant that the father was involved in the care of the child and from that, that she did not have primary responsibility for the child. The judge as was acknowledged by Mr Bramble failed to actually tackle the issue of responsibility as of the date of hearing. I am satisfied that the judge erred in law in failing to address the requirements of the EEA Regulations as of the date of the hearing.

7. I set aside the decision and remake it. I heard submissions from Mr Bramble and Mr Garrod. In remaking my decision I bear in mind that the appellant has very little credibility. The credibility findings, although challenged in the grounds seeking permission to appeal, cannot be said to be unreasoned or unjustifiable. The discrepancies in the evidence are more than sufficient to confirm that she has not been completely honest or truthful in the way in which her evidence was produced. That however relates and can be of relevance only in terms of the registration of the child's birth and the presence of the father at that registration and the acquisition of the passport.
8. Documents that were drawn to my attention include a letter at page 79 of the appellant's bundle from the child's primary school which confirms that he attends nursery school and is brought to school and collected by his mother or an aunt. The application for admission to the primary school is signed by the appellant and there is no mention of the father although of course there is no requirement on that form for the father to be named.
9. A tax credit award for the period September 2013 to March 2014 at pages 234 to 237 of the appellant's bundle confirms that she is in receipt of child tax credit and that child tax credit calculation is on page 236 and does not indicate that is being paid as a result of two people. Page 237 states:

"You claim tax credits as an individual. You must tell us if you marry or enter into a civil partnership or start to live with someone as if you are married or in a civil partnership. This award will then end and you will need to make a new claim with your partner if appropriate."
10. There is an amended tax credit letter from HM Revenue and Customs dated 9 December 2013 which amends the figures but again refers to her being a lone parent. This is on page 240 of the appellant's bundle.
11. On page 427 is a copy of a letter from Family Investments dated 17 February 2011 which is addressed to the child but care of her at her and Ryan's home address. The other correspondence in relation to the child trust fund is also addressed to the child at her address. The appellant is the registered contact.
12. Page 438 is a letter sent three months after the child was born to the father at an address in Sutton whereas the child and the appellant live at

an address in south east London. The confirmation of voter registration issued by Southwark Council does not give the father's name. He is a Commonwealth citizen so far as I know and therefore would have been eligible to appear on the voter registration, and he is not there.

13. It is very difficult to prove a negative. The evidence does not indicate that the father has anything to do with the child. There is no indication in the papers apart from the letter three months after the child was born sent to him at his address in Sutton that he has had any contact with the child whatsoever other than the registration of his birth and the acquisition of the passport.
14. Mr Bramble very properly draws attention to the fact that there are quite serious adverse credibility findings for the appellant and that these need to be taken into account in assessing the weight to be placed on the other documents that are produced. On the other hand the child tax fund documents, the tax credit and the working tax credit documents and the child tax credit documents are all based on information that the appellant has given to HM Revenue and Customs; if this information were false or fraudulent in any way then she could expect serious criminal charges to flow from that. There does not appear to have been any investigation by HM Revenue and Customs in connection with the forms that she has completed and if HM Revenue and Customs had any suspicions about the validity of that information I would have expected some sort of investigation to be undertaken.
15. Accordingly on the basis of the documentary evidence that the child is at school close to where he lives, that it is either her or an "auntie" who delivers him and collects him and that the official financial information is all indicative of her as a sole parent, I am satisfied that she is the primary carer of this child. If she were required to leave the UK the child would have to leave with her. She is the primary carer. There is no evidence that the child would be able to go and live with somebody else. It appears to be accepted that this father has another family. There is no indication whatsoever that this other family know of this child's existence. Therefore I am satisfied that the appellant does satisfy the criteria for the issue of a derivative right of residence and I therefore allow the appeal.

Signed

Date 30th July 2014

Upper Tribunal Judge Coker