



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

Appeal number: IA/24848/2014

THE IMMIGRATION ACTS

Heard at Field House

On 9 February 2015

Determination

Promulgated

On 10 February 2015

Before

UPPER TRIBUNAL JUDGE WARR

Between

MC

Appellant

and

SECRETARY OF STATE

Respondent

ANONYMITY DIRECTION MADE

Representation:

For the Appellant: No appearance

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

NOTICE THAT APPEAL IS BEING TREATED AS ABANDONED

1. The appellant is a citizen of Canada born on 27 February 1980. She came to the United Kingdom as a visitor. She is the spouse of a British Citizen and the couple have a child who is also a British Citizen. On 29 April 2014 she applied for leave to remain as the spouse and this application

was refused on 4 June 2014. The appellant appealed and her appeal came before First-tier Judge Balloch. The appeal was determined on the papers and dismissed on 20 October 2014.

2. Permission to appeal was granted on the basis that the First-tier Judge had not fully considered the impact of the removal of the appellant on her child.
3. On 22 December 2014 the respondent filed a response noting that the appellant had applied for a paper appeal which deprived the judge of hearing oral evidence, and submitting that the judge had carefully analysed the evidence and had found it inadequate and had identified inconsistencies. The appellant could apply to return as a spouse from Canada.
4. On 29 January 2015 the appellant and her sponsor advised the Tribunal that they had returned to Canada on 12th January 2014 and enclosed a Home Office letter dated 15th December 2014 addressed to Transat Airlines.
5. Mr Bramble submitted that in the circumstances the appeal had been abandoned and it was clear that the departure was voluntary. In the alternative he would rely on the respondent's response and the findings of the First-tier Judge who was working on limited information. The appellant and he family had left as a family unit.
6. The appellant appears to argue that she had been misled in some way into leaving the country. Her husband says that having been informed that his wife had no leave to remain and that the appeal decision had been made and declined "we made arrangements to leave the United Kingdom even though leaving has had an immense personal, psychological and financial detrement [sic] to our family."
7. I am not satisfied that the appellant's departure with her family was anything other than voluntary and that the family made a conscious and free decision to depart. This is not the case of someone not leaving of there own volition - see paragraph 24 of MM (Ghana), R (on the application of) v Secretary of State for the Home Department [2012] EWCA Civ 827 per Toulson LJ:

"Having had the benefit of considering the arguments of counsel in this case, in my view it is erroneous to suppose that the question of whether a person has "left the United Kingdom" within the meaning of s.104(4) is in some way dependant on the actual or intended duration of his absence from the UK, whether hours, days, weeks or months. With great respect to Mummery LJ, I am not able to agree that a person who travels out on a short holiday and returns on the following day has not thereby "left the United Kingdom" within the meaning of the statute. Such a person has "left the United Kingdom" as a physical act. I would exclude the exceptional case of someone who did not leave of his own volition, but for

example was kidnapped, because the word "leaves" implies a volitional act. But I would not interpret the word "leaves" as requiring additionally an intention never to return, or a minimum actual or intended period of absence."

8. I agree with Mr Bramble that the departure of the family was purely voluntary "a volitional act."
9. I should add that it is open to the family to make a fresh application to the Secretary of State on the basis of their current circumstances - as Judge Balloch points out in her determination the material before her was not before the respondent and insufficient evidence had been provided to her and some matters required clarification. I should perhaps also mention that Judge Balloch did consider the best interests of the child between paragraphs 27 and 29 of the determination, referring to EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874. Had the appeal not been treated as abandoned I would have found for the reasons given by the respondent in the respondent's notice and as advanced by Mr Bramble at the hearing that the determination was not materially flawed in law.

This appeal is abandoned by virtue of the appellant's departure from the United Kingdom.

ANONYMITY ORDER

The anonymity order made by the First-tier Judge continues.

Signed

Upper Tribunal Judge Warr

9 February 2015