



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02309/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision & Reasons
Promulgated
On 7 July 2017**

On 6 July 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SINTHANI MASANKHULA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K M Forrest, Advocate, instructed by Latta & Co,
Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Fox, promulgated on 25 November 2016, dismissing her appeal against refusal of a derivative residence card as the primary carer of her son, a UK citizen.
2. At 12 the judge narrates the appellant's evidence that she lived with the father of her child from the birth of their son on 1 February 2014 until October 2014. However, he later refers to the parting as taking place in October 2015 – twice at 15, and again at 17.
3. The respondent accepts that the later references are erroneous.

4. Ground 1 of the appeal to the UT, based on this error, triggered the grant of permission. The ground says that the error was material and amounted to error of law because it incorrectly informed the judge's further findings.
5. I find that this slip was of no significance. The judge plainly proceeded on the appellant's account of the relationship, and rejected her case for reasons which have nothing to do with the misplaced date.
6. Ground 2 is failure to take account of the child's best interests. Correctly, Mr Forrest withdrew this ground. Article 8 issues, including the best interest of a child, do not arise in an appeal of this nature.
7. Ground 3 complains that the judge was wrong to suggest that the appellant's knowledge of the medical condition of the child's paternal grandmother showed some contact, because that information dated from the time of their separation. Ground 4 says that the judge speculated in finding the appellant's account of earlier events in her life to be untrue, and that further evidence had not been led about these matters because they were irrelevant.
8. Grounds 3 and 4 are no more than incidental quibbles. They do not show that the judge went wrong on the decisive issue, which had been clearly put to the respondent in the decision appealed against. He was not satisfied that the appellant had shown that she is the primary carer of the child, that the child would be forced to leave the UK if she were required to leave (which cannot occur as a result of the decision under appeal), or that the child's father was unwilling to accept responsibility. Those findings were open to the judge and are supported by reasons in which no error has been asserted. On the scanty state of the evidence before the judge, the findings are unsurprising.
9. If the appellant has a case based on family life, article 8 and the best interests of her child, it needs to be made by the appropriate application to the respondent. If she has further evidence to show entitlement to a derivative residence card, she may apply again on that basis.
10. The grounds do not show that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside. That decision shall stand.
11. No anonymity direction has been requested or made.

 Hugh Macleman

6 July 2017
Upper Tribunal Judge Macleman

