



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

Appeal Numbers: IA/09197/2012
IA/06543/2012
IA/00845/2013

THE IMMIGRATION ACTS

**Heard at Stoke on Trent
On 15 October 2013**

**Determination
Promulgated
On 30 October 2013**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**GLADYS TETTEH
RICHARD TETTEH**

Respondents

Representation:

For the Appellant: Mrs K Heath, a Senior Home Office Presenting Officer
For the Respondents: Mrs Bassiri-Dezfouli, instructed by Michael and Co,
Legal Services

DETERMINATION AND REASONS

1. The respondents, Gladys Tetteh and Richard Tetteh, were born respectively on 22 July 1968 and 22 March 1988 and are citizens of Ghana. I shall hereafter refer to the respondents as “the appellants” as they were

before the First-tier Tribunal and to the Secretary of State as “the respondent.”

2. The appellants had applied for permanent residence in the United Kingdom. Their applications were refused on 20 February 2012 and the appellants appealed to the First-tier Tribunal (Judge Landes) which, in a determination promulgated on 22 February 2013, allowed the appeals of both appellants to the extent that the Tribunal found them to be entitled to the derivative right of residence in the United Kingdom. The Secretary of State was granted permission to appeal to the Upper Tribunal by Judge Kamara on 20 March 2013.
3. There are two grounds of appeal. The first challenges the determination on the basis that Richard Tetteh had not been, as at the date of the First-tier Tribunal, “in education in the United Kingdom” as required by paragraph 15A(1)(c) of the Immigration (European Economic Area) Regulations 2006 and, as a consequence, was not entitled to a derivative right of residence under that paragraph.
4. Mrs Heath, for the respondent, did not seek to pursue this ground of appeal. She did not do so in the light of what the First-tier Tribunal recorded at [9]:

Before evidence was heard, it was conceded on behalf of the respondent that Mr Tetteh was entitled to a residence card as a person who was entitled to a derived right of residence and thereupon entitled to be issued with a derivative residence card (Regulations 15A and 18A Immigration (European Economic Area) Regulations 2006 as amended). On that basis and having considered the recent opinion of the Advocate-General in the case of **Alarape (Case C-529/11)**, Mrs Bassiri-Desfouli the Counsel for the appellants on behalf of Mr Tetteh indicated that she would not pursue his appeal insofar as it related to the respondent’s decision to refuse him with a permanent residence card (sic).

5. Mrs Heath acknowledged that the Presenting Officer before the First-tier Tribunal had unequivocally conceded that Mr Tetteh was entitled to a residence card as a person who was entitled to a derived right of residence. The first ground of appeal, therefore, sought to go behind that concession and she did not seek to pursue it. I was grateful to Mrs Heath for making the position of the respondent clear.
6. The second ground of appeal challenges the judge’s findings regarding the care which Mrs Tetteh provides to Richard Tetteh. The ground asserts that the appellant had failed to demonstrate that he would be unable to continue to be educated in the United Kingdom if his mother were required to leave.
7. I find that this ground of appeal is without merit. Richard Tetteh is disabled and is in receipt of Disability Living Allowance. The judge found at [38] that Mr Tetteh

Needs not just the presence, but also the care of his mother. He has some need for physical care on occasions ... and I am satisfied he also has a close relationship with his mother ... she continues to provide him with a permanent home in the UK and emotional support as well as financial support.

8. In the same paragraph, the judge makes the very clear finding that “in practice, Mr Tetteh would not be able to complete his postgraduate education in the UK if his support in the UK was taken away by the removal of Mrs Tetteh.” The judge was satisfied that Mrs Tetteh continued to be the “primary carer” of her son.
9. The grounds of appeal amount to little more than a disagreement with the clear findings which the judge has made on the evidence before her. It was clearly open to the judge, especially in light of the fact that Mr Tetteh is disabled, to conclude that Mrs Tetteh continued to act as her son’s primary carer. The judge had not ignored evidence which was relevant to that finding nor did she have regard to irrelevant matters. The finding can hardly be described as perverse. The judge has produced a thorough and detailed determination which sought to engage with the evidence and she reviewed her findings of fact in the light of the relevant jurisprudence. I do not find that she has erred in law for the reasons stated in the grounds of appeal or at all.

DECISION

10. This appeal is dismissed.

Signed

Date 28 October 2013

Upper Tribunal Judge Clive Lane