



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

Appeal Number: IA/01020/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 September 2014**

**Determination  
Promulgated  
On 3 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MISS OLUFUNMILOLA COMFORT BRIGHT**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Bello, Solicitor, Apex Solicitors

For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant's appeal against a decision to refuse to issue her with a derivative residence card on the basis that she is a third country national upon whom a British citizen is dependent was dismissed by First-tier

Tribunal Judge Traynor (“the judge”) in a determination promulgated on 1<sup>st</sup> July 2014.

2. The appellant claimed to be the primary carer, responsible for her father, a British citizen. The judge heard oral evidence from the appellant and from her father, took into account substantial documentary evidence, which included a letter from a doctor, and heard submissions from the two representatives present. He concluded that the appellant could not benefit from regulation 15A or 18A of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) and that the evidence did not show that she was her father’s primary carer. He went on to make an Article 8 assessment. In this context, the judge found that the requirements of the Immigration Rules (“the rules”), contained in Appendix FM and paragraph 276ADE, were not met. In the Article 8 assessment, the judge’s primary finding was that family life had not been shown between the appellant and her father and that there was nothing exceptional about her circumstances, or his. The judge found, on an alternative basis, that if family life were shown, the adverse decision amounted to a proportionate response. So far as private life was concerned, the judge found that any interference in this context was reasonable and proportionate. He dismissed the appeal.
3. In the grounds in support of the application, it was contended first, that the judge made findings against the weight of evidence before him. He concentrated on evidence regarding the circumstances and condition of the appellant's father at earlier times, rather than focusing on circumstances as at the date of the hearing. The appellant's father's health had deteriorated over the past few years, since 2012. The judge did not properly consider or take into account that he was 91 years old and that it was better to have his daughter present with him as a primary carer, rather than relying on a stranger or the state. The evidence showed that other family members in the United Kingdom seldom visited. Other relatives lived abroad. The judge’s finding that the appellant's decision to move in with her father was a matter of convenience was described in the grounds as perverse.
4. In a second ground, it was contended that the judge applied the wrong standard of proof in relation to regulation 15A. Although he directed himself in terms that the applicable standard was a balance of probabilities, the findings he made showed that a different standard had been applied. The judge should have given due weight to the appellant's father's advanced years, as a strong factor. Moreover, the phrase “primary carer” under regulation 15A was not given its proper meaning by the judge. His findings regarding the ability of other people or agencies to look after the appellant's father detracted from a proper assessment of whether the appellant was his “primary” carer.
5. Permission to appeal was granted on 18 July 2014. The judge granting permission found that it was arguable that the judge failed to give due

weight to a letter dated 3<sup>rd</sup> March 2014 from Dr B Bello, who stated that it would be beneficial for the appellant's father's health and general welfare for the appellant herself to continue to care for him.

### **Submissions on Error of Law**

6. Mr Bello relied upon his skeleton argument and also had with him a copy of the relevant parts of the 2006 Regulations and part of form DRF1, the application for a derivative residence card.
7. He said that the judge placed too much weight on issues concerning events before the date of hearing. The critical evidence concerned the health of the appellant's father. This included a letter from his GP. It was apparent that her father was to have an operation for cataracts. The judge should have given full weight to this evidence. The trend in the determination seemed to be that the judge found that the appellant's father was healthy for a man of his age. This was against the weight of the evidence.
8. Irrespective of the medical evidence, the age of the appellant's father should have been given full weight in its own right. He was now over 91 years old.
9. The judge considered regulation 15A in terms of whether the appellant was her father's sole carer whereas the proper test was whether she was his primary carer. The regulation did not deal with circumstances where there was nobody else present at all. It was plainly concerned with the presence of a primary carer. At paragraph 43 of the determination, the judge found that the appellant's decision to move in with her father was merely a matter of convenience. It was, however, entirely natural that she would move with him. If her father's health deteriorated subsequently, this should not be held against the appellant.
10. So far as the standard of proof was concerned, paragraphs 39 and 41 in effect showed that the judge believed that the appellant should be almost "on duty" daily. Again, this was not what was required by regulation 15A. The judge also gave weight to the presence of other people, available to provide care and support. This was apparent at paragraph 48. If this were so, nobody could succeed under regulation 15A because, if no relatives were available, state agencies would step in. This showed the judge's material error. Moreover, the relevant trend in the United Kingdom was that health and social services agencies were short of funds. This should have been given proper weight also. The doctor's letter was before the judge, making it clear that it would be better for the appellant to care for her father.
11. The respondent's own guidance, apparent from the application form, put the focus on whether a person depended upon his or her carer. This was a question of fact not properly considered by the judge. The evidence

showed that the appellant was her father's primary carer. The judge did not properly weigh the evidence. His findings revealed that he applied a higher standard than a balance of probabilities.

12. Ms Kenny said in response that the grounds revealed a disagreement with the judge's findings but no error of law was shown. The determination was very well reasoned and the judge dealt with all matters in hand. At paragraph 40, the judge noted the cataract operation and the medical opinion that the appellant's father would recover and might be able to drive again. The judge was entitled to find, on the evidence, that the appellant's father had no health issues, save for the need for cataracts to be removed. Overall, the judge clearly took into account the appellant's father's health. The father's age was a major factor, although not determinative, but again this was taken into account. The judge accepted that on occasion the appellant herself might help her father with putting on socks and shoes but, at paragraph 41, he was entitled to find that there was no requirement for this support on a daily basis. The judge clearly did consider the letter from Dr Bello. This revealed the doctor's view that it would be beneficial for the daughter to look after her father but what was not known was the question actually put and the letter did not support the claim that the appellant was her father's primary carer. In any event, the judge took the letter into account. No particular health matters were identified in it. It was apparent from paragraphs 42 and 43 that the appellant's father was, on the evidence, healthy and there was nothing to show that his daughter was compelled to move in to act as a carer. All in all, the determination was well reasoned and no error of law was shown in the grounds or submissions made on the appellant's behalf.
13. In a brief response, Mr Bello said that the Tribunal ought to look at what was reasonable or not. The father's age was not in doubt and what other medical evidence would be required to show that he might suffer from memory problems? His age spoke for itself. The judge granting permission mentioned this as a factor at paragraph 3. The letter from the doctor was also fundamental evidence.

### **Findings and Conclusions on Error of Law**

14. I am grateful to the representatives for their careful submissions and to Mr Bello for his skeleton argument.
15. The thrust of the challenge is that the judge did not weigh the evidence properly and applied the wrong standard of proof in relation to regulation 15A. Having read the determination carefully and having also carefully considered the grounds, I conclude no material error of law has been shown. As Ms Kenny submitted, the determination is extremely thorough and well reasoned. The judge directed himself correctly in relation to the standard of proof, at paragraph 12 of the determination. His assessment of the evidence was largely set out at paragraphs 18 to 34. It is clear that

the judge took into account the letter from Dr Bello and paragraph 42 contains the judge's assessment of that evidence.

16. The weight to be given to evidence is a matter for the judge determining an appeal. In this case, the determination shows that the judge gave due weight to the particular items before him and he did not weigh any single item in isolation or out of context. Nor did he misunderstand the issues before him. His focus was properly on regulation 15A and, in his Article 8 assessment, the content of the ties established by the appellant in the United Kingdom, since her arrival here. Important in this context was her relationship with her father, particularly following her decision to move into his home in October 2012. The judge did not, I find, put undue emphasis on evidence of events before the hearing. He weighed the documentary evidence with the oral evidence, as he was required to. The findings of fact he made regarding the health and general wellbeing of the appellant's father, taking into account of course his advanced age, were open to him on the evidence. Again, in this context, the letter from Dr Bello formed part of his assessment.
17. Having weighed the evidence, the judge was entitled to conclude that the appellant had not shown that she was her father's primary carer and that the requirements of regulations 15A and 18A of the 2006 Regulations were not met. He did not apply an incorrect standard of proof. Paragraph 45 of the determination shows, for example, that having correctly directed himself earlier in the determination, he kept the correct standard in mind throughout.
18. Similarly, the judge's human rights assessment is free from error. He directed himself in the light of recent authority, took into account fully his findings of fact regarding the appellant's ties here and the relationships she enjoys with her father and others and then weighed the competing interests. His conclusion that the adverse decision was a proportionate response and that the appellant could not succeed in relation to Article 8 was open to him on the evidence.
19. In summary, I conclude that the judge's findings of fact were open to him and that he correctly applied the law to those findings. The grounds do not show an error of law and so the decision of the First-tier Tribunal shall stand.

## **DECISION**

20. The decision of the First-tier Tribunal contains no error of law and shall stand.

Signed

Date: 10 September 2014

Deputy Upper Tribunal Judge R C Campbell