



Self-Typed

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

Appeal Number: IA/15840/2014

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 10 November 2014

On 24 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MISS MABEL OPOKU AYIKU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr P Armstrong, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Courtney sitting at Hatton Cross on 13 August 2014) dismissing her appeal against the decision of the Secretary of State made on 17 March 2014 to refuse to issue her with a permanent residence card as confirmation that she had acquired a right of permanent residence under the Immigration (EEA) Regulations 2006 as a dependant family member of her father. The First-tier Tribunal did not make an anonymity order, and I do not consider that such an order is required for these proceedings in the Upper Tribunal.

2. Permission to appeal to the Upper Tribunal was granted on 1 October 2014 by Judge Andrew on the ground that the judge had arguably erred in law in failing to consider Article 8 in the alternative.
3. At the hearing before me, Mr Andy Boateng supported the appellant in presenting her case as a McKenzie friend. The appellant, who was a Ghanaian national, had been here since 2006. She had two British citizen children by Isaac Kofi Owusu, a Ghanaian national who had ILR. He was still in the UK, but was estranged from the appellant and not in contact. She was thus the sole carer for the children, and so qualified for a derivative right of residence under Regulation 15A. Alternatively, she was eligible for Article 8 relief.

Discussion

4. Although the appellant had legal representation at the time her appeal was lodged, there was no suggestion in the Grounds of Appeal that she was eligible for a derivative right of residence. While recognising her potential eligibility, the judge declined to decide the point as no evidence had been adduced before her to confirm that the appellant was the primary carer of the two girls, nor that they would be unable to reside in the UK if the appellant was required to leave. The judge gave adequate reasons for not finding that the appellant had acquired a derivative right of residence under Regulation 15A on the limited evidence that was before her, and in circumstances when it had not been the appellant's case by way of appeal that she enjoyed such a right of residence. The appellant had unsuccessfully pursued with her brother (who was legally represented at the same hearing before Judge Courtney) the case that they were both still dependant on their father, despite the appellant having moved out of her father's household in 2010 and despite her having no received financial support from her father after she moved out.
5. I note from reviewing the file that the appellant instructed solicitors after the hearing who made representations. But these did not reach the judge until after she had sent her decision for promulgation. These representations were to the same effect as those made at the hearing before me, and were backed up by some documentary evidence, including the children's birth certificates. But the evidence was not determinative of the issues in controversy, and in one respect it was troubling: no father was identified on the second daughter's birth certificate, raising the question of how she had been issued a British passport on the premise that she was the daughter of Mr Isaac Owusu. So in all the circumstances I find that there was no procedural unfairness in the judge maintaining the position she had taken in the draft sent for promulgation.
6. The judge explained why she was declining to consider an alternative claim under Article 8: the appellant had a putative claim under Regulation 15A and she was not facing removal. It was a reasonable exercise of the judge's case management powers not to consider whether the appellant was eligible for Article 8 relief in circumstances where she had clearly not

exhausted her remedies under the Regulations 2006. Furthermore, the facts which needed to be determined in a putative claim under Regulation 15A were going to be highly relevant to the resolution of an alternative claim under Article 8. So there was no error of law in the way that the judge disposed of an alternative Article 8 claim.

Decision

7. The decision of the First-tier Tribunal dismissing the appeal did not contain an error of law, and the decision stands.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

Date

Deputy Upper Tribunal Judge Monson

Approval for Promulgation

Name of Deputy Judge issuing approval:	Mr A J Monson
Appellants' Names:	
Oral determination (please indicate)	<input type="checkbox"/>

I approve the attached Determination for promulgation

Name:

Date:

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

Other Information:

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