



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: IA/18670/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17 March 2014

Promulgated on:  
On 20 March 2014

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**Yao Liu  
(Anonymity order not made)**

**Appellant**

**and**

**Secretary of State for the  
Home Department**

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant: Mr S Bellara, Counsel

For the Respondent: Ms R Pettersen, Senior Home Office Presenting Officer

**Background**

1. This appeal comes before me following the grant of permission to the respondent by First-tier Tribunal Judge Chohan in respect of the determination of First-tier Tribunal Judge M A Khan who allowed the appeal by way of a determination dated 30 December 2013. Although the Secretary

of State is the party challenging the determination, I have, for the sake of convenience, continued to refer to her as the respondent and to the applicant as the appellant.

2. The appellant is a citizen of China born on 14 December 1986. She appeals the respondent's decision to refuse to issue her with a derivative residence card under Regulations 15A(4A), 15A(7), 18A and 21(A) of the Immigration (EEA) Regulations 2006. She has a daughter born on 26 January 2012 who is a British national on account of the fact that the child's father is British. The appellant admits to have deliberately set out to become pregnant by a British citizen so as to better her chances of remaining in the UK. The child's father has acknowledged paternity and financially supports her. In June 2012 the appellant was convicted of prostitution. She received an eight month sentence and has £55,000 confiscated.
3. The application was refused because the respondent was not satisfied that the appellant had shown that her child would be unable to remain in the UK without her and because it was not conducive to the public good to issue a residence card in view of her criminality.
4. The judge found that other than providing financial help and occasionally visiting her, Mr Wild played no role in the child's life. He found that the child was wholly dependent upon her mother and that the requirements of Regulation 15A had been met. He found that if the appellant were removed, the child would be taken into care or be adopted and that her best interests were therefore served in remaining with the appellant. Accordingly, he allowed the appeal on Article 8 grounds as well.

### **Appeal hearing**

5. At the hearing I heard submissions from the parties. Ms Pettersen took issue with the judge's findings on the involvement of the father in her upbringing and the conclusion that's he would be adopted or taken into care if the appellant were to be removed. She pointed out that there was a conflict between the Memorandum of Understanding signed between the appellant and Mr Wild and the appellant's oral evidence, that there was nothing to support his conclusions about the child's fate, that no removal directions had been set for the appellant and that all these failings had resulted in an unsustainable decision.
6. Mr Bellara submitted that the judge did not even need to consider Article 8 if he allowed the appeal under the Regulations. He submitted that part of the determination was sustainable. A summary of the evidence had been provided and reasons were given for his findings under the Regulations. The determination should not be disturbed.

7. Ms Pettersen responded. She submitted that the conflict over Mr Wild's role had not been resolved given the appellant's own evidence that Mr Wild played a significant role in financially supporting the child and regularly visited her.
8. At the conclusion of the hearing I reserved my determination which I now give.

### **Findings and Conclusions**

9. I have taken into account the submissions made and the determination of the First-tier Tribunal. Regrettably, the determination is littered with typographical, spelling and grammatical errors which does not inspire confidence. That could, however, be overlooked if the substance and reasoning were sound.
10. A primary carer of an EEA national child will qualify for a derivative right of residence under regulation 15A(4) if the following conditions are met:
  - (a) the applicant is the primary carer of an EEA national and
  - (b) the relevant EEA national
    - (i) is under the age of 18;
    - (ii) is residing in the UK as a self-sufficient person; and
    - (iii) would be unable to remain in the UK if their primary carer were required to leave the UK.
11. The evidence before the judge was that despite a Memorandum of Understanding in which Mr Wild disclaimed parental responsibility for the child, he nevertheless provided all the necessary financial support, paid the rent and visited her regularly. He has a ten year old son who lives with him for whom he has responsibility, the child's mother being overseas. The appellant claimed that Mr Wild would not take care of the child on a permanent basis and it was on this basis that the appeal was essentially allowed but, as the respondent has pointed out, no reasons are given for why the judge accepted the oral evidence of the appellant given her criminal record and the fact that she appears to have tricked Mr Wild and conceived the child so as to enhance her own chances to remain here. Certainly, the evidence does not support the finding that the appellant is the sole carer of the child and whilst she might satisfy the Tribunal that she is the child's primary carer, the judge has failed to provide adequate reasons for his finding that the requirements of sub section (b)(iii) have been met.
12. For these reason, I find that the judge did not provide adequate reasons for his conclusions under the Regulations. It follows that his Article 8 conclusions

cannot stand as they are based on the same flawed premise. However, that aside, it has to be said that the judge's assessment is wholly inadequate and incomplete; no findings have been made following the setting out of the Razgar steps and the questions listed at paragraph 36 are unanswered.

13. The determination is set aside and the appeal is remitted to another First-tier Tribunal Judge for re-hearing on all issues.

### **Decision**

- 14 The First-tier Tribunal Judge made errors of law. His determination is set aside in its entirety. The appeal is remitted to the First-tier Tribunal for hearing afresh by another judge.

**Signed:**

**Dr R Kekić  
Judge of the Upper Tribunal**

17 March 2014