



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

Appeal Number: IA/10152/2014

**THE IMMIGRATION ACTS**

**Heard at London Field House  
On 20 January 2015**

**Decision Promulgated  
On 02 February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**WILFREDO BUSINZA ESCALANTE**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer

For the Respondent: Mr D Bazini, instructed by Peter Horada & Co

**DECISION AND REASONS**

1. The Secretary of State appeals to the Upper Tribunal against the determination of First-tier Tribunal Judge Petherbridge that was promulgated on 13 October 2014. Judge Petherbridge allowed Mr Escalante's appeal against the immigration decisions of 6 February 2014 (i) refusing to vary his leave to remain under the parent route of appendix FM to the immigration rules and (ii) to remove him by way of directions.
2. At the start of the hearing, Mr Kandola explained that, although he relied on the grounds of application for permission to appeal, he did not have

much to argue. The decision turned on whether Mr Escalante took and would continue to take an active role in his daughter's upbringing. Mr Kandola conceded that, despite what was implied in the grounds, Judge Petherbridge had concluded that Mr Escalante had taken an active role in his daughter's upbringing and that he continued to do so and that there was no basis on which the findings could be challenged.

3. I did not need to hear from Mr Bazini. There is no definition of "active role" in the immigration rules and it is to be given its ordinary meaning. The evidence considered by Judge Petherbridge was sufficient for him to find that Mr Escalante met the requirements of the immigration rules in that respect. He relied on evidence of how Mr Escalante maintained contact with his daughter through regular contact over modern means of communication and by regular visits. It was through this regular contact that he took an active role in his daughter's upbringing, something confirmed unequivocally by his daughter's mother. I acknowledge that the meaning of "active role" could have been made tighter had that been the wish of the Secretary of State but as drafted there is nothing in the immigration rules to suggest that the approach taken by Judge Petherbridge was wrong in law.
4. As I announced at the hearing, I can discern no error on a point of law in the decision and reasons statement and therefore the Secretary of State's appeal is dismissed.

## **Decision**

The Secretary of State's appeal to the Upper Tribunal is dismissed because the decision and reasons statement of Judge Petherbridge does not contain an error on a point of law.

I uphold Judge Petherbridge's decision.

Signed

Date **02 February 2015**

Deputy Judge of the Upper Tribunal