



IAC-AH-DP-V2

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

Appeal Number: IA/20000/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MISS EJATU JALLOH  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E Akohene - Solicitor

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Sierra Leone born on 28<sup>th</sup> January 1978. The Appellant has an extensive immigration history. She first applied as a visitor on 25<sup>th</sup> August 2005. On 31<sup>st</sup> December 2013 the Appellant applied for a derivative residence card as confirmation of a right of residence under European Community law as the primary carer of a British citizen who is residing in the UK. That application was refused by the Secretary of State on 22<sup>nd</sup> April 2014.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Omosho on 5<sup>th</sup> December 2014. In a determination promulgated on 10<sup>th</sup> December 2014 (albeit marked 10<sup>th</sup> November 2014) the Appellant's appeal was allowed under the Immigration (European Economic Area) Regulations 2006.
3. On 18<sup>th</sup> December the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. On 4<sup>th</sup> February 2015 First-tier Tribunal Judge Mark Davies granted permission to appeal. Judge Davies considered that the judge's findings with regard to the finding that the Appellant was the primary carer was arguably flawed in that he had given inadequate consideration to the role that the children's father played in their care and that he had not had regard to the role of the children's father in providing financial support. He considered that the judge had given inadequate consideration to the ability of the children's father to look after them should the Appellant be removed and the fact that the children's father worked did not justify a finding that the Appellant was the primary carer.
4. The issue was whether or not there is a material error of law in the decision of the First-tier Tribunal. A Rule 24 response was lodged by the Appellant's solicitors. This is an appeal by the Secretary of State but for the purpose of continuity throughout the appeal process the Secretary of State is referred to herein as the Respondent and Miss Jalloh as the Appellant. The Appellant appears by her instructed solicitor Mr Akohene. Mr Akohene is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Whitwell.

### **Submission/Discussion**

5. Mr Whitwell acknowledges that the grounds challenge whether or not the Appellant is the primary carer of her two children Rakim Junior Kargbo (born 23<sup>rd</sup> February 2011) and Rahim Arun Kargbo (born 13<sup>th</sup> December 2012). He acknowledges it is not disputed that the Appellant's partner Mr Junior Kargbo and the two children are British citizens nor is it disputed that the Appellant is not married to Mr Kargbo. What is disputed by the Secretary of State is whether the Appellant can under the EEA Regulations be considered reasonably to be the primary carer of the two children. It is the submission of Mr Whitwell that there is nothing to stop either Mr Kargbo caring for the children whilst the Appellant leaves the country and reapplies for entry clearance or for the children to leave the UK with the Appellant. Indeed he goes further by pointing out that there will be nothing to stop the whole family leaving as a family unit.
6. Mr Akohene acknowledges that parental responsibility is shared and that this is agreed but that care is a physical concept and it is clear that Mr Kargbo is in full-time employment and that the Appellant is at home and therefore the primary carer. He points out that Section 55 of the 2009 Act impacts on all applications particularly of this nature and that it is necessary for the court to consider what is in the best interest of the

children and that this has been done by the First-tier Tribunal Judge. He submits there is no material error of law in the decision of the First-tier Tribunal Judge and asked me to dismiss the Secretary of State's appeal.

## **The Law**

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

9. It is not easy to try and extract from the Secretary of State's Grounds of Appeal where they contend that the First-tier Tribunal Judge has made a material error of law. It is clear from reading those Grounds of Appeal that the Secretary of State disagrees with the finding that the Appellant is the primary carer for the children and that the Appellant has primary responsibility for the care of the children as required under Regulation 15A(7)(b)(i) of the 2006 Regulations. What the Grounds of Appeal amount to however is nothing more than disagreement with the finding of the First-tier Tribunal Judge. Such an approach does not assist Mr Whitwell in his valiant submissions and it is difficult to understand quite why the First-tier Tribunal has granted permission to appeal.
10. Analysing the decision of the First-tier Tribunal Judge he has given careful consideration to the documents produced and to the law relating to the obtaining of a derivative right of residence. Thereinafter he has gone on to consider the factual detail. Miss Jalloh is acknowledged to be a citizen of Sierra Leone and that she came to the UK as a visitor in February 2009 and has lived here since. She started a relationship with her partner Mr

Junior Kargbo who is a British citizen in 2010 and it is acknowledged that they have two children and that they are a family unit.

11. The judge found that the family live together in the same household and that the father shares parental responsibility for the children. Regulation 7 states the basis for a primary carer as:
  - (a) if the applicant is a direct relative or legal guardian of that person; and
  - (b) (i) is the person who has primary responsibility for that person's care; or
  - (ii) shares equally the responsibility for that person's care with one other person who is not an exempt person.
12. That Regulation has been given due and proper consideration by the First-tier Tribunal Judge at paragraph 28. The judge was entitled to make the generalisation at paragraph 29 of his determination that as the family live together in the same household that Mr Kargbo (and the judge had heard his evidence) shares parental responsibility for the children and the judge has made conclusions at paragraph 29 having given full reasons as to how he reached those conclusions that the Appellant has primary responsibility for the care of the children.
13. The judge has gone further than this and has gone on thereafter to give due and proper consideration to the consequences of the children if the Appellant were removed or asked to leave the UK. This takes into account the family circumstances. I acknowledge that the Secretary of State challenges the outcome. This is a very poor appeal based on nothing more than disagreement with the decision of the First-tier Tribunal Judge. Further if such a decision is to be challenged it would have been helpful if the Grounds of Appeal had done more than merely amount to disagreement and had gone on to show how and why there might have been a material error of law in the First-tier Tribunal's decision.
14. This is a well constructed decision, with clear findings and sound reasoning as to why such findings were made. The decision discloses no material error of law and the decision of the First-tier Tribunal Judge is maintained and the appeal of the Secretary of State is dismissed.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law and the decision is maintained and the appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris