



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

Appeal Number: IA/38990/2013

**THE IMMIGRATION ACTS**

**Heard at Belfast  
On 13 January 2015**

**Decision & Reasons Promulgated  
On 16 February 2015**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**JINTANA SUMMA**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr S McTaggart, Counsel, instructed by Madden & Finucane Solicitors

For the Respondent: Mr M Shilliday, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Thailand, born on 5 March 1981.
2. The appellant was last admitted to the United Kingdom on 9 May 2012 on a family visit visa valid until 5 November 2012. On 18 September 2012 she sought a derivative residence card on the basis that she was the primary carer of a British citizen resident in the United Kingdom, namely her son Bobby Quinn (a minor).

3. That application was refused by a decision of 30 August 2013 on the basis that she had failed to demonstrate that she was the primary carer in the matter.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Fox on 28 July 2014.
5. The appellant adopted her statement and gave oral evidence as did her mother-in-law Etta Quinn.
6. It was the finding of the Judge at paragraph 12 of the determination that it was clear from the appellant's evidence and that of the child's grandparent, that prior to the appellant's arrival in the United Kingdom they (the grandparents) were exclusively responsible for the child's welfare and upbringing, a process which continued.
7. The primary challenge to the determination is that the Judge has misunderstood or misstated the evidence that had been presented by the appellant and by Etta Quinn. In summary, the evidence of the appellant was that prior to coming to the United Kingdom she lived with her fiancé Steven Quinn (now deceased) since 2005. Bobby was born in 2008 and thereafter he remained in Thailand. Her fiancé came to England because he had to undergo an operation. Bobby lived with him with a number of visits made to Thailand. Unfortunately in one of those visits the fiancé Steven was killed in a motorbike accident in Thailand. Thus it was that the appellant had returned to the UK with Bobby. She made it clear in her evidence, and indeed the evidence is clear from that of the grandparent that she, Bobby and the grandparents lived together and she the appellant took the primary decisions.
8. It was on the basis therefore that the Judge had misunderstood the evidence that grounds of appeal were lodged and permission to appeal was granted.
9. Mr McTaggart, who represents the appellant, invited my attention to the written evidence and presented also for my attention a note of the oral evidence that had been compiled by the solicitor in attendance at the First-tier Tribunal. It is clear and indeed most fairly accepted as being so by Mr Shilliday, who represents the respondent, that what the appellant said about her involvement and responsibility for Bobby was quite at variance with what was set out in the determination.
10. It was conceded by all parties that in those circumstances it was an error of law to misstate the evidence to such a degree. Accordingly the decision is set aside.
11. Given that further evidence may well be required and argument directed on the issue of primary responsibility and care, it is appropriate and in accordance with paragraph 7 of the Senior President's Practice Directions, that the matter be remitted to the First-tier Tribunal for a rehearing on the evidence as presented. Indeed there may need to be further or updated evidence as to the child's progress and to the responsibility of the various parties for his upbringing.

12. In those circumstances therefore the appeal before the Upper Tribunal is allowed. The decision of the First-tier Tribunal shall be set aside to be made upon a subsequent rehearing.

Signed

Date **13 February 2015**

Upper Tribunal Judge King TD