



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

Appeal Number: IA/48778/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> March 2015**

**Decision & Reasons  
Promulgated  
On 10<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**MISS VICTORIA OLOTU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Claimant: Mr T Melvin, Senior Home Office Presenting Officer  
For the Respondent: Miss M Hannan, Solicitor

**DECISION AND REASONS**

1. I shall refer to Miss Olotu as the claimant. She is a citizen of Nigeria whose appeal was allowed by First-tier Tribunal Judge Cooper in a decision promulgated on 25<sup>th</sup> November 2014. She had applied for a residence card as the primary carer of two British citizen children resident here. The judge found her credible and went on to allow the appeal in respect of the EEA Regulations.

2. Grounds of application were lodged indicating that it had initially been said that the Claimant and a Mr Samuel Alaughe were jointly responsible for the children's upbringing and the judge had failed to deal with this inconsistency and had gone on to misapply the Regulations. It is clear that the father of the British citizen children maintained a relationship with the children as outlined in the grounds.
3. Before me Mr Melvin for the Home Office expanded on his grounds indicating that there had been a lack of proper evidence placed before the judge. The Claimant had been the only witness and it was to be expected, given the terms of refusal, that corroboration would have been available to support her claim that she was the primary carer of the children. The Claimant's representatives had written that the Claimant and the husband had joint responsibility for the children. Absent proper evidence it was said that the decision should be set aside and proper investigation into the circumstances made by the First-tier Tribunal.
4. For the claimant Miss Hannan said that there was no material error by the judge who had assessed all the evidence before him and had found (paragraph 42) that the Claimant was "consistent, convincing and credible". The fact that the father had made irregular contributions did not mean he was able to look after the children. It is true there was an uncle who had some knowledge of the circumstances but this was a minor issue and his evidence would have been limited. I was asked to uphold the decision.
5. I reserved my decision.

### **Conclusions**

6. It was incumbent upon the judge to make findings on the evidence presented to him backed up by adequate reasons. The judge observed in the Notice of Appeal that it was asserted that the Claimant was the primary carer of her British-born children and that the father lived apart from the children in a different family unit and had no relationship with the Claimant. The judge noted that it was clearly stated in the application form that there was no one else who was able and willing to provide the Claimant's children with care if she were to leave the United Kingdom.
7. It is true that there was a contradiction in the evidence in the sense that the solicitors acting for the Claimant had written advising that the Claimant and the father had joint responsibility of the children. The Claimant was tested on that point in oral evidence and the judge noted that the Claimant did not know why the solicitors would have written what they did write (paragraph 33). The judge referred to that inconsistency again in his findings noting that there was "no doubt" an inconsistency between the Claimant's evidence and the solicitor's covering letter.
8. However, in paragraph 42, the judge noted that the Claimant had made clear in her oral evidence that she and Mr Alaughe had separated some

four years ago and that he had established a new family relationship. He referred to the fact that the Claimant had been legitimately closely cross-examined by the Home Office Presenter but went on to say that he found her answers “consistent, convincing and credible”. Given that evidence it was a small step for him to find that the Claimant did not share equally the care of her daughters with their father or indeed with anybody else (paragraph 44). Consequently he was satisfied that the Claimant met the definition of a primary carer in Regulation 15A(7)(b)(i) of the 2006 Regulations.

9. The crucial finding is that the judge found the Claimant to be a credible witness. In my view he was entitled to do so. The inconsistency referred to was one which did not arise from the Claimant’s own evidence but from the information given in the solicitor’s letter. Having heard the Claimant’s oral evidence it is clear enough that the judge considered that notwithstanding that inconsistency, he preferred and accepted the evidence of the Claimant. It should be noted that the inconsistency arises from a filtering process between the solicitors and the Claimant which no doubt the judge was aware of.
10. It seems that the Claimant was thoroughly tested in cross-examination and there is nothing in the judge’s determination, or in the grounds of application, to suggest that there was any other credibility point which the judge should have considered and did not consider. The judge had to make findings on the evidence placed before him. There is no suggestion that he applied the wrong standard of proof and he did have proper regard to the discrepancy which is the centre point of the appeal before me. Having assessed the evidence the positive credibility findings were ones which the judge was perfectly entitled to make. It follows there is no error in law and the decision must stand.

### **Notice of Decision**

11. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
12. I do not set aside the decision.

No anonymity direction is made.

Signed

Date **9<sup>th</sup> March 2015**

Deputy Upper Tribunal Judge J G Macdonald