



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

Appeal Number: IA/22493/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 23 December 2015

Promulgated

On 20 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MISS YETUNDE OLUWATOSIN GBADEBO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in Person

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought in relation to a decision of First-tier Tribunal Judge Lucas which was promulgated on 13 July 2015. The appellant applied to the Secretary of State for a derivative residence card in accordance with regulation 15A of the Immigration (European Economic Area) Regulations 2006. The application was made on 15 May 2013. It was refused on the basis that there was insufficient evidence that the appellant was the primary carer of the child in question. That is apparent from the Reasons for Refusal Letter, dated 15 May 2014.
2. When the matter was before the First-tier Tribunal, evidence was received from the appellant stating that she had sole responsibility for the child, who is a United Kingdom citizen, and various items of documentation were

placed before the Tribunal. The appellant's case was that she was not financially supported at all by the father and even if there had been some degree of contact at the time of the child's birth that had soon vanished and, in effect, she was a single parent and solely responsible for bringing up that child.

3. The relevant provision (regulation 15A) which should have been considered by the First-tier Tribunal Judge required the appellant to demonstrate that she was the primary carer of a UK national.
4. The difficulty, which is acknowledged as such today on behalf of the Secretary of State, is paragraph 25 of the First-tier Tribunal decision which reads as follows:

“There is simply no evidence in this case that forms any basis for the proposition that the appellant has any derivative rights from an EEA national because there is simply no evidence or basis for the assertion that she had a relationship in the first place. The fact that she has a child with an individual named (on the birth certificate) as the father, does not prove that there was a relationship as required or understood by the EEA Regulations.”

5. The focus in the passage cited and elsewhere in the decision is on the relationship between the appellant and the father of the child. What the First-tier Tribunal Judge should have concentrated on - but did not - was the relationship between the appellant and the child concerned.
6. In those circumstances, I am satisfied that there was an error of law in that the First-tier Tribunal Judge did not turn his mind to the question which had to be decided. That is so central to the issue in dispute that it is a clear error of law and not one which cannot be categorised as being immaterial.
7. There is insufficient material before this Upper Tribunal to determine the matter today and therefore the only way I can dispose of this matter is by remitting it to a First-tier Tribunal to be determined afresh. It would be inappropriate to comment upon any of the factual findings of the First-tier Tribunal as none can be preserved.

Notice of Decision

Appeal allowed. Matter remitted to the First-tier Tribunal to be heard by a judge other than Judge Lucas.

No anonymity direction is made.

Signed *Mark Hill*

Date

18 January 2016

Deputy Upper Tribunal Judge Hill QC

TO THE RESPONDENT
FEE AWARD

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

Signed *Mark Hill*

Date

18 January 2015

Deputy Upper Tribunal Judge Hill QC