



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

Appeal Number: EA/05401/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 11 October 2018**

**Determination Promulgated
On 17 October 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**LOVELIE [I]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Krushner, of Counsel, Direct Access

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Filipino national born on 21 October 1984. She is the mother of an Irish national child and she challenges the determination of First-tier Tribunal Judge Rowlands, promulgated on 20 June 2018, dismissing her appeal against the respondent's refusal to grant her a derivative residence card.

2. Permission to appeal against the determination of the First-tier Tribunal was granted by Judge Grimmett on 14 August 2018 on the basis that the judge had arguably erred in failing to make any finding on the issue of whether the appellant was the primary carer of the child. The matter then came before me on 11 October 2018.

3. **The Hearing**

4. I heard submissions from the parties. A full note of the submissions is set out in my Record of Proceedings. For the appellant, Mr Krushner relied on the two grounds that had been argued. The first was that no findings at all had been made on the issue of whether the appellant was the child's primary carer. The second was that inadequate or no reasons had been given for whether the claim of self-sufficiency had been made out. If the judge dismissed the appeal because the child itself was not self-sufficient then he was wrong as self-sufficiency could be established by the child's primary carer. Clearly, argued Mr Krushner, no child could ever provide its own funds. It was argued that the findings were unclear and there was nothing to suggest that the judge considered the evidence as none of it had been mentioned. There was evidence as to the appellant's free accommodation and the charitable funds she received; none of this was referred to. The determination was unsafe and should be set aside.

5. In response, Mr Melvin very fairly and properly conceded that he could not defend the determination.

6. I did not require any further submissions from Mr Krushner. I indicated that I would be setting aside the determination and remitting it for a fresh hearing before the First-tier Tribunal. I now give my reasons for doing so.

7. **Discussion and Conclusions**

8. The determination is plainly inadequate. The judge refers to the "Chang" rather than the Chen case (at paragraph 1) and proceeds to refer to reg. 17 instead of 16 as he should have done. Although the judge was required to make findings both on the issue of whether the appellant is the primary carer of her child and on self-sufficiency, he made no finding at all on the former and his findings on the latter are wholly inadequate, unlawful and unsustainable. The judge appears to find that the child cannot be self-sufficient because of his young age. He takes no account of the appellant's position or of third party support despite the evidence of this before him.

9. The errors are so serious that the only possible outcome is to set aside the decision in its entirety.
10. **Decision**
11. The First-tier Tribunal made errors of law. The decision is set aside. It shall be remade by another judge of the First-tier Tribunal at a date to be arranged.
12. **Anonymity**
13. I have not been asked to make an anonymity order and see no reason to do so.

Signed

A handwritten signature in black ink, appearing to read "R. Keir-E" with a small dot at the end.

Upper Tribunal Judge

Date: 11 October 2018